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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

GORDON ARMSTRONG,
ANDREW VIERRA, SANDY
MORENO and STEPHEN
MERMAN, individually, and on
behalf of a class of similarly situated
individuals,

Plaintiffs,

v.

SUBARU OF AMERICA, INC. and
FUJI HEAVY INDUSTRIES, LTD.,

Defendants.

Case No.:

CLASS ACTION COMPLAINT FOR:

- (1) Violations of California's Consumers Legal Remedies Act, Cal. Civ. Code §1750 *et seq.*
- (2) Violations of Unfair Competition Law, Cal. Bus. & Prof. §17200 *et seq.*
- (3) Breach of Implied Warranty pursuant to Song-Beverly Consumer Warranty Act
- (4) Violations of the Colorado Consumer Protection Act, Colo. Rev. Stat §6-1-101 *et seq.*
- (5) Breach of Implied Warranty of Merchantability, Colo. Rev. Stat. §4-2-313 & 4-2.5-212
- (6) Breach of Express Warranty under the Magnuson-Moss Warranty Act
- (7) Breach of Implied Warranty under the Magnuson-Moss Warranty Act
- (8) Unjust Enrichment

DEMAND FOR JURY TRIAL

1. Plaintiffs Gordon Armstrong, Andrew Vierra, Sandy Moreno, and Stephen Merman (“Plaintiffs”) bring this action for themselves and on behalf of all persons in the United States who purchased or leased any 2017-2019 Subaru Forester, 2017-2019 Subaru Outback, or 2017-2019 Subaru Legacy (“Class Vehicles”) designed, manufactured, marketed, distributed, sold, warranted, and/or serviced by Subaru of America, Inc. (“SOA”) and Fuji Heavy Industries, Ltd. (“Fuji”) (together, “Defendants” or “Subaru”). Plaintiffs allege as follows:

INTRODUCTION

2. This is a consumer class action concerning a failure to disclose material facts and a safety concern to consumers.

3. Defendants manufactured, marketed, distributed, and sold the Class Vehicles without disclosing that the Class Vehicles' windshields were defective and dangerous because they are spontaneously and/or unreasonably cracking, chipping and otherwise breaking (the "Defect"). Further, replacement windshields provided by Defendants and paid for by Plaintiffs and the Class suffer from the same defect and therefore are equally defective and dangerous.

4. Upon information and belief, the Class Vehicles all contain the same type of windshields, and the Defect is inherent in each Class Vehicle and was present at the time of sale.

5. Upon information and belief, Defendants knew that the Class Vehicles contain this Defect but have concealed their knowledge from the public and continue to deny that the Defect exists.

6. A large number of Class Vehicle owners and lessees have reported experiencing the Defect, often shortly after purchase. One consumer complained to the National Highway Transportation Safety Authority (“NHTSA”) as follows:

MY WINDSHIELD IS CRACKED FOR THE 2ND TIME NOW IN ITS FIRST YEAR OF OWNERSHIP. THE FIRST TIME IT CRACKED IT WAS BECAUSE OF A PEBBLE STRIKE FROM THE ROAD.

1 EXTREMELY SMALL FRAGMENT STRUCK THE
 2 GLASS, MADE A POCK MARK, AND THE
 3 WINDSHIELD WAS REPLACED. TODAY, LESS
 4 THAN A MONTH LATER A NEW CRACK
 5 APPEARED WHILE DRIVING WITHOUT ANY
 6 STRIKE FROM AN OBJECT. SUBARU DEALER
 7 CLAIMS IT WAS STRUCK BUT FIND A CRACK
 8 ONLY WITHOUT ANY POINT ALONG IT OF AN
 9 IMPACT MAKES ME VERY VERY SUSPICIOUS.
 10 NOW I HAVE TO WAIT FOR THE INSURANCE
 11 COMPANY TO SETTLE ON CHARGES AND SEND
 12 A CHECK BEFORE THE NEXT WINDSHIELD CAN
 13 BE APPLIED. MY WIFE AND I WERE CALMLY
 14 DRIVING ON COMPLETELY PAVED ROADS
 15 WHEN WE BOTH WATCHED THE CRACK APPEAR
 16 AND GROW DURING OUR DRIVE. :-(I HAVE
 17 DRIVEN FOR 50+ YEARS, AND OWNED 20+ CARS.
 18 I'VE NEVER HAD THIS HAPPEN.¹

19 7. The Defect poses a serious safety hazard to drivers, passengers, and
 20 pedestrians. A spontaneously cracking or severely cracked windshield can impair
 21 the driver's view and distract the driver. Moreover, cracks in the windshield
 22 prevent the safe and proper operation of Subaru's "EyeSight® Driver Assist
 23 Technology". According to Subaru,

24 EyeSight Driver Assist Technology is capable of
 25 detecting vehicles traveling in front and can activate in
 26 order to mitigate or even avoid the collision. The system
 27 reduces rear-end crashes with injuries by up to 85
 28 percent according to IIHS. *

With the help of two Subaru-developed color cameras
 mounted behind the windshield, EyeSight can identify
 vehicles traveling in front, traffic lanes, obstacles and
 pedestrians. The system has helped reduce the rate of
 pedestrian-related insurance claims by 41 percent
 according to the Highway Loss Data Institute. **²

8. In addition to this obvious safety hazard putting their personal safety
 and that of the public at risk, vehicle owners or lessees incur substantial
 monetary losses because Defendants refuse to replace the broken windshields

¹ <https://www.nhtsa.gov/vehicle/2018/SUBARU/OUTBACK/SW/AWD>
 (last accessed November 13, 2019).

² See Subaru Press Release, Oct. 16, 2018, "Subaru Sells One-Millionth
 Vehicle With Eyesight® Driver Assist Technology." available at:
<http://media.subaru.com/pressrelease/1350/120/subaru-sells-one-millionth-vehicle-eyesight-driver-assist>

1 under warranty. In addition to the windshield replacement cost, consumers incur
2 other expenses resulting from the defect, such as having the Eyesight system
3 recalibrated. Furthermore, many consumers report having to replace their
4 windshields multiple times due to the Defect because their windshields are being
5 replaced with equally defective products.

6 9. Defendants were aware of the Defect from pre-production testing,
7 design failure mode analysis, calls to their customer service hotline, a Technical
8 Service Bulletin (TSB) that it sent to its dealers but not shared directly with
9 consumers that detailed the same Defect in prior model years for two of the three
10 Class Vehicles, and customer complaints made to dealers. However, this
11 knowledge and information was exclusively in the possession of Defendants and
12 their network of dealers and, therefore, unavailable to consumers.

13 10. The Defect is material because it poses a serious safety concern.
14 As attested by Class Members in scores of complaints to the National Highway
15 Traffic Safety Administration (“NHTSA”), and other online forums, the Defect
16 can impair any driver’s visibility, cause a distraction, affect Subaru’s
17 “EyeSight[®] Driver Assist Technology,” and greatly increase the risk of
18 collision.

19 11. The Defect is also material because consumers incur significant and
20 unexpected repair costs. Defendants’ failure to disclose, at the time of purchase,
21 the Defect is material because no reasonable consumer expects to spend
22 hundreds of dollars to repair or replace windshields that either crack
23 spontaneously or only with a mild impact that would not result in cracking had
24 the Defect not existed.

25 12. Had Defendants disclosed the Defect, Plaintiffs and Class Members
26 would not have purchased the Class Vehicles or would have paid less for them.
27
28

THE PARTIES

Plaintiff Gordon Armstrong

13. Plaintiff Armstrong is a California resident who lives in Santa Clarita, California.

14. On June 3, 2019, Plaintiff Armstrong purchased a used 2017 Subaru Outback (VIN 4S4BSETC4H3320210) from First Kia of Simi Valley in Simi Valley, California.

15. Plaintiff Armstrong purchased his vehicle primarily for personal, family, or household use.

16. Passenger safety and reliability were important factors in Plaintiff Armstrong's decision to purchase his vehicle. Before making his purchase, Plaintiff Armstrong did an online search for the vehicle, including on "Google," "Youtube", Edmunds.com, KBB.com, Carfax,.com autodtrader.com, cars.com, truecar.com, and carmax.com. He watched SOA television ads, visited SOA's website to research the vehicle, and test drove his vehicle. He visited Subaru Sherman Oaks in Van Nuys, CA to learn more about and inspect the model vehicle. Plaintiff Armstrong believed that the Outback would be a safe and reliable vehicle. When Plaintiff Armstrong purchased his vehicle, he was unaware that the vehicle's windshield contained the Defect.

17. Defendants' omissions were material to Plaintiff Armstrong. Had Defendants disclosed their knowledge of the Defect before he purchased his vehicle, Plaintiff Armstrong would have seen and been aware of the disclosures. Furthermore, had he known of the Defect, Plaintiff Armstrong would not have purchased his vehicle, or would have paid less for it.

18. Specifically, on September 9, 2019, with approximately 30,000 miles on the odometer of his Subaru Outback, a pebble or small stone hit his windshield and created a small chip less than one-half inch long near the wiper blade. Over the course of the next 5 weeks, the chip slowly and steadily grew

1 into a T-shaped crack, with the top of the T comprised of one crack
 2 approximately 8 inches long and the other crack approximately 14 inches long.



16 19. On October 15, 2019, Plaintiff Armstrong took his vehicle to Santa
 17 Clarita Auto Glass, Inc., where his cracked windshield was replaced with a new
 18 Subaru OEM windshield, paying \$490 for the repair.

19 20. Upon information and belief, the replacement windshield supplied
 20 by Subaru suffers from the same defect as the original windshield installed in
 21 Plaintiff Armstrong's Class Vehicle.

22 21. At all times, Plaintiff Armstrong, like all Class Members, has driven
 23 his vehicle in a manner both foreseeable and in which it was intended to be used.

24 **Plaintiff Sandy Moreno**

25 22. Plaintiff Moreno is a California citizen who resides in Stockton,
 26 California.

27 23. On October 28, 2018, Plaintiff Moreno purchased a new 2019
 28 Subaru Outback (VIN 4S4BSANC4K3216359) from Elk Grove Subaru in Elk

1 Grove, California.

2 24. Plaintiff Moreno purchased her vehicle primarily for personal,
3 family, or household use.

4 25. Passenger safety and reliability were important factors in Plaintiff
5 Moreno's decision to purchase her vehicle. She had previously owned a 2003
6 Subaru WRX and was familiar with the brand. She went to Modesto Subaru in
7 Modesto, California where she test drove a Subaru Outback. She later went to
8 Elk Grove Subaru in Elk Grove, California where she spoke extensively with a
9 salesperson before she purchased the vehicle from that dealership. She had also
10 seen Subaru television ads. Plaintiff Moreno believed that the Outback would be
11 a safe and reliable vehicle. When Plaintiff Moreno purchased her vehicle, she
12 was unaware that the vehicle's windshield contained the Defect.

13 26. Defendants' omissions were material to Plaintiff Moreno. Had
14 Defendants disclosed their knowledge of the Defect before she purchased her
15 vehicle, Plaintiff Moreno would have seen and been aware of the disclosures.
16 Furthermore, had she known of the Defect, Plaintiff Moreno would not have
17 purchased her vehicle, or would have paid less for it.

18 27. Specifically, on December 31, 2018, with approximately 5,000
19 miles on the odometer of her Subaru Outback, a pebble or small stone hit her
20 windshield in the lower driver's side corner. She expected that a small chip in the
21 windshield would result. Instead, a large crack appeared.

22 28. On January 7, Plaintiff Moreno took her vehicle to Safelite Auto
23 Glass in Stockton, California where her cracked windshield was replaced with a
24 new Subaru OEM windshield, paying \$100.00 for the repair, which was the
25 amount of her insurance deductible.

26 29. Upon information and belief, the replacement windshield supplied
27 by Subaru suffered from the same defect as the original windshield installed in
28 Plaintiff Moreno's Class Vehicle.

1 30. On February 27, 2019, Plaintiff Moreno was driving to Elk Grove
2 Subaru dealership for a basic vehicle service appointment when a chip appeared
3 in her recently replaced Subaru windshield. She does not recall any debris hitting
4 the windshield. That day, after the service appointment, she immediately drove
5 the vehicle over to Safelite Auto Glass in Stockton, California and had the chip
6 filled in at a cost of \$75.

7 31. At all times, Plaintiff Moreno, like all Class Members, has driven
8 her vehicle in a manner both foreseeable and in which it was intended to be used.

9 **Andrew Vierra**

10 32. Plaintiff Vierra is a California citizen who resides in Fullerton,
11 California.

12 33. On May 26, 2019, Plaintiff Vierra purchased a new 2019 Subaru
13 Outback (VIN 4S4BSANC3K3333186) from Ocean Subaru in Fullerton,
14 California.

15 34. Plaintiff Vierra purchased his vehicle primarily for personal, family,
16 or household use.

17 35. Passenger safety and reliability were important factors in Plaintiff
18 Vierra's decision to purchase his vehicle. He test drove a Subaru Outback at
19 Ocean Subaru. He spoke extensively with a salesperson at Ocean Subaru before
20 he purchased the vehicle from that dealership and read promotional brochures
21 about the vehicle at the dealership. He ran a Google search of the vehicle before
22 he purchased, and carefully reviewed information presented through the search
23 results. As a result of this search, he viewed Youtube Subaru Outback new car
24 video reviews, Subaru Outback videos posted by Consumer Reports, videos
25 posted by independent Subaru Outback owners, and videos posted by Subaru
26 itself. He had also seen Subaru television ads. Plaintiff Vierra believed that the
27 Outback would be a safe and reliable vehicle. When Plaintiff Vierra purchased
28 his vehicle, he was unaware that the vehicle's windshield contained the Defect.

1 36. Defendants' omissions were material to Plaintiff Vierra. Had
2 Defendants disclosed their knowledge of the Defect before he purchased her
3 vehicle, Plaintiff Vierra would have seen and been aware of the disclosures.
4 Furthermore, had he known of the Defect, Plaintiff Vierra would not have
5 purchased her vehicle, or would have paid less for it.
6 Specifically, on or around November 14, 2019, with approximately 10,500 miles
7 on the odometer of his Subaru Outback, Plaintiff Vierra was driving his vehicle
8 when he heard a popping sound, but saw no visual evidence of any impact. He
9 later noticed a fishhook-shaped crack in the windshield behind the rear-view
10 mirror. Within several days, this crack extended to the middle of the driver's side
11 of the windshield.

12 37. Soon after the crack appeared, Plaintiff Vierra called Ocean Subaru
13 and he was told that the dealership would not repair his windshield under any
14 warranty. He then called his insurance provider who told him to have the
15 windshield replaced at All Star Glass and that he would be responsible to pay
16 \$379 for the replacement.

17 38. On November 18, 2019, Allstar Glass in La Habra, California sent
18 an agent to Vierra's residence to repair his windshield. The agent inspected the
19 windshield and determined that it could not be done at that location and that it
20 needed to be taken to All Star Glass' business location. Vierra scheduled an
21 appointment with All Star Glass for November 26, 2019.

22 39. On November 26, 2019, Plaintiff Vierra took his vehicle to All Star
23 Glass in San Diego, California where his cracked windshield was replaced with a
24 new Subaru OEM windshield. He was to be charged \$250 for the repair, which
25 was the amount of his insurance deductible. However, the windshield installation
26 technician could not properly calibrate the vehicle's front view camera with the
27 new windshield and informed Vierra that a new windshield had to be ordered
28 and another service appointment scheduled for a second attempt at replacing the

1 windshield.

2 40. Upon information and belief, any replacement windshield supplied
3 by Subaru will suffer from the same defect as the original windshield installed in
4 Plaintiff Vierra's Class Vehicle.

5 41. At all times, Plaintiff Vierra, like all Class Members, has driven his
6 vehicle in a manner both foreseeable and in which it was intended to be used.

7 **Stephen Merman**

8 42. Plaintiff Merman is a Colorado citizen who resides in Golden,
9 Colorado.

10 43. On July 15, 2019, Plaintiff Merman purchased a certified pre-owned
11 2018 Subaru Forester (VIN JF2SJAGC8JH5560641) from AutoNation Subaru
12 West in Golden, Colorado.

13 44. Plaintiff Merman purchased his vehicle primarily for personal,
14 family, or household use.

15 45. Passenger safety and reliability were important factors in Plaintiff
16 Merman's decision to purchase his vehicle. He had directly previously owned a
17 2016 Subaru Outback and other Subarus before that and was familiar with the
18 brand. Before purchasing his vehicle, he test drove it and spoke extensively with
19 a salesperson at the dealership. He had also seen Subaru television ads. He also
20 inspected the Subaru pre-owned window sticker before purchasing. Plaintiff
21 Merman believed that the Forester would be a safe and reliable vehicle. When
22 Plaintiff Merman purchased his vehicle, he was unaware that the vehicle's
23 windshield contained the Defect.

24 46. Defendants' omissions were material to Plaintiff Merman. Had
25 Defendants disclosed their knowledge of the Defect before he purchased his
26 vehicle, Plaintiff Merman would have seen and been aware of the disclosures.
27 Furthermore, had he known of the Defect, Plaintiff Merman would not have
28 purchased his vehicle, or would have paid less for it.

1 47. Specifically, on October 26 or 27, 2019, with approximately 23,000
2 miles on the odometer of his Subaru Forester, his life partner's daughter was
3 driving the vehicle with his life partner in the car when a crack occurred in the
4 top left corner of the windshield. Neither his life partner nor her daughter heard
5 or saw any debris hit the windshield. On October 28, 2019, he saw that the crack
6 had spread from the top left corner of the windshield to the rear-view mirror area
7 of the windshield.

8 48. During the week of October 28, 2019, Plaintiff Merman took the
9 vehicle to AutoNation Subaru West dealership to complain about the windshield
10 crack and was told that his Subaru maintenance agreement did not cover
11 windshield replacement, that the dealership does not replace windshields, and
12 that he should have the windshield replaced at Safelite Auto Glass.

13 49. On November 4, 2019, Plaintiff Merman took his vehicle to Safelite
14 Auto Glass in Lakewood, Colorado where his cracked windshield was replaced
15 with a new Subaru OEM windshield. The total cost of the replacement was \$772,
16 of which he paid \$500.00 for the repair, which was the amount of his insurance
17 deductible.

18 50. Upon information and belief, the replacement windshield supplied
19 by Subaru suffered from the same defect as the original windshield installed in
20 Plaintiff Merman's Class Vehicle.

21 51. On November 13, 2019, Plaintiff Merman took his vehicle, which
22 had 25,638 miles at the time, to AutoNation Subaru West to recalibrate the
23 "EyeSight[®] Driver Assist Technology" feature with his new windshield. The
24 dealership charged him, and he paid, \$220 for this recalibration.

25 52. At all times, Plaintiff Merman, like all Class Members, has driven
26 his vehicle in a manner both foreseeable and in which it was intended to be used.

27 **Defendant**

28 53. Defendant Fuji Heavy Industries Ltd. ("Fuji" or "FHI") is a

1 Japanese corporation located at The Subaru Building, 1-7-2 Nishishinjuku,
2 Shinjuku-ku, Tokyo, 160-8316, Japan. Defendant Fuji is responsible for the
3 design, manufacturing, distribution, marketing, sales and service of Subaru
4 vehicles, including the Vehicles, around the world, including in the United
5 States.

6 54. Defendant Subaru of America, Inc. (“SOA”) is a New Jersey
7 corporation with its principal place of business located in Cherry Hill, New
8 Jersey.

9 55. SOA is the U.S. sales and marketing subsidiary of Fuji and wholly
10 owned subsidiary responsible for distribution, marketing, sales and service of
11 Subaru vehicles in the United States.

12 56. Fuji and SOA (collectively “Subaru”) have common management.
13 Indeed, SOA’s sales, marketing and distribution efforts in the United States are
14 headed by corporate officers of Fuji. For example, Takeshi Tacihmori, the
15 chairman and CEO of SOA is also a Director and Corporate Executive Vice
16 President for Fuji in charge of the Subaru Global Marketing Division, Subaru
17 Japan Sales and Marketing Division and Subaru Overseas Sales and Marketing
18 Divisions 1 and 2. The incoming Chairman of SOA is also a Corporate Senior
19 Vice President of Fuji who is Chief General Manager of Subaru Overseas and
20 the Vice President in charge of Sales and Marketing, Division 1.

21 57. Upon information and belief, Defendant Fuji communicates with
22 Defendant SOA concerning virtually all aspects of the Subaru products it
23 distributes within the United States.

24 58. Upon information and belief, the design, manufacture, distribution,
25 service, repair, modification, installation and decisions regarding the engines
26 within the Vehicles were performed exclusively by Defendants.

27 59. Upon information and belief, Defendants develop the owner’s
28 manuals, warranty booklets, and information included in maintenance

1 recommendations and/or schedules (including the oil change intervals) for the
2 Vehicles.

3 60. At all relevant times, Defendants were and are engaged in the
4 business of designing, manufacturing, constructing, assembling, marketing,
5 distributing, and/or selling automobiles and motor vehicle components in Los
6 Angeles County and throughout the United States of America.

7 **JURISDICTION**

8 61. This is a class action.

9 62. Members of the proposed Class are citizens of states different from
10 the home state of Defendants.

11 63. On information and belief, the aggregate claims of individual Class
12 Members exceed \$5,000,000.00 in value, exclusive of interest and costs.

13 64. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d).

14 **VENUE**

15 65. Defendants, through their business of distributing, selling, and
16 leasing the Class Vehicles, has established sufficient contacts in this district such
17 that personal jurisdiction is appropriate. Defendants are deemed to reside in this
18 district pursuant to 28 U.S.C. § 1391(a).

19 66. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)
20 because Plaintiff Armstrong resides in the County of Los Angeles, California. In
21 addition, Plaintiff Armstrong's Declaration, as required under California Civil
22 Code section 1780(d) but not pursuant to *Erie* and federal procedural rules,
23 reflects that a substantial part of the events or omissions giving rise to the claims
24 alleged herein occurred, or a substantial part of property that is the subject of this
25 action, is situated in Los Angeles County, California. It is attached as Exhibit 1.

26 **FACTUAL ALLEGATIONS**

27 67. For years, Defendants have designed, manufactured, distributed,
28 sold, and leased the Class Vehicles. Defendants have sold, directly or indirectly,

1 through dealers and other retail outlets, thousands of Class Vehicles in California
 2 and nationwide. Defendants warrant and service the Class Vehicles through their
 3 nationwide network of authorized dealers and service providers.

4 68. Defendants provided all purchasers and lessees of the Class
 5 Vehicles with a New Vehicle Limited Warranty (the "Warranty") with the
 6 purchase or lease of the Class Vehicles.

7 69. The Warranty states in relevant part:

8 **2017 Warranty**

9 Below is a brief description of the Subaru Limited Warranty for 2017
 10 model year Subaru vehicles that is provided to each buyer by Subaru at no
 11 additional charge. Your Subaru Dealer has complete details concerning the
 12 warranty and any exclusions and/or restrictions that may apply. Please visit your
 nearest Subaru Dealer for this further information. Click here for optional
 extended protection beyond the warranty.

13 **Who Makes These Warranties**

14 These warranties are made by SUBARU of America, Inc. ("SOA")[1],
 One Subaru Drive, P.O. Box 9103, Camden, NJ 08101.

15 **When These Warranties Apply**

16 These warranties only apply if the vehicle was imported or distributed by
 17 SOA and sold to the first retail purchaser by an Authorized SUBARU Retailer in
 18 the United States. Any and all repairs must be performed by an Authorized
 19 SUBARU Retailer located in the United States. Every owner of the vehicle
 20 during the warranty period shall be entitled to the benefits of these warranties. If
 the vehicle is sold or otherwise transferred, it is recommended and requested that
 the new owner promptly send written notice of the transfer of ownership to SOA
 at the address indicated above.

21 **Warranty Periods**

22 Warranty coverage begins on the date the vehicle is delivered to the first
 23 retail purchaser. If the vehicle was used as a demonstrator or company vehicle
 before being sold at retail, warranty coverage begins on the date the vehicle was
 first placed in such service.

24 **What is Covered**

25 These warranties cover any repairs needed to correct defects in material
 26 or workmanship reported during the applicable warranty period and which occur
 under normal use:

- 27 • In any part of the 2017 model year SUBARU which is identified on
 the inside front cover of this Warranty & Maintenance Booklet(the
 "vehicle").
- 28 • Any Genuine SUBARU Optional Accessories[2]
- In addition, adjustment services are covered one time only during the

first 36 months/36,000 miles of operation, whichever comes first.

New Vehicle Limited Warranty

BASIC COVERAGE is 3 years or 36,000 miles, whichever comes first.

Subject to the exclusions listed in this warranty, it covers the entire vehicle.

70. The warranties and representations contained in the Warranty were and are material to Plaintiffs because Plaintiffs would not have purchased the Class Vehicle or would not have paid as much as they did if the windshield in his Class Vehicle were not covered by a full warranty.

71. The Defect causes the Class Vehicles' front windshield to crack, chip and/or fracture for no reason at all and/or under circumstances that would not cause nondefective windshields to similarly fail. The Defect presents a safety hazard that renders the Class Vehicles unreasonably dangerous to consumers due to, *inter alia*, the impact of the Defect on driver visibility, driver distraction, and impairment of the EyeSight[®] safety system.

72. Defendant issued Technical Service Bulletin (TSB) Number 12-192-15R on October 26, 2016, revised on November 19, 2016, that sets forth the same Defect as it existed in prior model years for two of the three Class Vehicles at issue here and states the known cause of the Defect in 2015-2016 Legacy and Outback models as follows: "Further investigation has determined the root cause for many of these failures to be the ceramic materials used for the black-colored printed perimeter combined with the silver-colored material used for the wiper deicer portion of the windshield glass." On information belief, this is at least one cause of the Defect in the Class Vehicles.

73. Plaintiffs are informed and believe and based thereon allege that prior to the sale of the Class Vehicles, Defendants knew, or should have known, about the Defect through their exclusive knowledge of non-public, internal data about the Defect, including: pre-release testing data; early consumer complaints about the Defect to Defendants' dealers who are their agents for vehicle repairs; aggregate data from Defendants' dealers; consumer complaints to the NHTSA

1 and resulting notice from NHTSA; dealership repair orders; testing conducted in
 2 response to owner or lessee complaints; and other internal sources of aggregate
 3 information about the problem. Nevertheless, Defendants have actively
 4 concealed and failed to disclose this defect to Plaintiffs and Class Members at
 5 the time of purchase or lease and thereafter.

6 74. Furthermore, on information and belief, when vehicles are brought
 7 in for repair, Defendants' dealers refuse to replace the defective windshields
 8 under warranty, often claiming that an impact caused the failure, notwithstanding
 9 the fact that the customer witnessed no impact and/or that any impact was so
 10 slight it should not have caused the windshield to fail. On information and belief,
 11 Defendants' dealers' systematic denial of valid warranty claims is part of a
 12 concerted effort orchestrated by Defendants to minimize the cost of warranty
 13 claims.

14 75. Moreover, on information and belief, when consumers have their
 15 windshields repaired, their defective windshields are merely replaced with
 16 similarly defective windshields, so that their Class Vehicles are not actually
 17 repaired.

18 **The Defect Poses a Serious Safety Concern**

19 76. The Defect is material to consumers because it presents a serious
 20 safety concern. Class Members have repeatedly reported disturbing failures to
 21 the National Highway Traffic Safety Administration ("NHTSA"). The following
 22 are complaints reflecting the safety risk posed:

23 77. On NHTSA's website where consumer complaints about 2017
 24 Subaru Outbacks are posted,³ the following incident posted on August 2, 2017
 25 and dated July 27, 2017 was reported:

26 WINDOW CRACKED BUT WAS NOT HIT WITH
 27 ANYTHING. CRACK APPEARED ON THE
 28 DRIVERS SIDE, HALFWAY DOWN THE

³<https://www.nhtsa.gov/vehicle/2017/SUBARU/OUTBACK/SW/AWD>

WINDSHIELD, AND OBSTRUCTS VIEW OF THE DRIVER. CAR HAS LESS THAN 1600 MILES ON IT. DEALER STATED IT WAS NOT COVERED AS A DEFECT AND WE ARE ON OWN OWN TO REPLACE IT. THERE ARE NUMEROUS COMPLAINTS OF SUBARU OUTBACK WINDSHIELDS CRACKING BECAUSE THEY ARE TO THIN. DANGEROUS TO DRIVE DUE TO VISIBILITY ISSUES.

78. On NHTSA's website where consumer complaints about 2018 Subaru Outbacks are posted,⁴ the following incident posted on February 16, 2019 and dated February 16, 2019 was reported:

SECOND CRACKED WINDSHIELD IN ONE WEEK. FIRST ONE WAS REPLACED 2/8/18. BOTH TIMES TRAVELED AT LOW TO MODERATE SPEED 25-40 MPH ON LOCAL FWY IN LOS ANGELES, CA. SUNNY MILD, DRY CONDITIONS, NO WIND. SMALL PEBBLE HIT WINDSHIELD. COULDN'T SEE HIT, ONLY HEARD A SMALL CRACK SOUND. DAMAGED WINDSHIELD, FIRST TIME SMALL PEBBLE MARK GREW TO LONG CRACK. INITIAL IMPACT SIZE ABOUT 1.5 - 2 MM. ONE WEEK LATER ANOTHER PEBBLE HIT WINDSHIELD IN SLOW TRAFFIC, 35 MPH, NO TRUCKS NEAR BY. SAME SIZE OF MARK. SUBARU REQUIRES THEIR WINDSHIELD REPAIR AT CUSTOMER COST OF \$930. WARRANTY DOES NOT COVER ANY DEBRIS DAMAGE, BUT SMALL PEBBLES SHOULD NOT CAUSE THIS KIND OF DAMAGE AND COSTS. HAD A GRAND CHEROKEE 184K MILES AND NEVER A CRACK OR DING, NEVER ISSUE FOR OUR 2005 SAAB, OR ANY OREVIOUS VEHICLE. SHOULD NOT COST US \$1860 MONTH ADDITIONAL TO MAINTAIN CAR, PLUS SAFETY ISSUE. ACCORDING TO SUBARU CORPORATE: DOES NOT RECOMMEND US TO DRIVE IT WITH I-SITE CAMERA WITH A DAMAGED WINDSHIELD. THEY SAY THAT THE GLASS IS THINNER/LIGHTER IN ORDER TO WORK WITH CAMERA AND BE MORE FUEL EFFICIENT/LIGHTER. CARS SHOULD BE ABLE TO WITHSTAND NORMAL DRIVING AND ROAD CONDITIONS.

79. On NHTSA's website where consumer complaints about 2019

⁴ <https://www.nhtsa.gov/vehicle/2018/SUBARU/OUTBACK/SW/AWD> (last viewed November 10, 2019).

Subaru Outbacks are posted,⁵ the following incident posted on January 24, 2019 and dated January 7, 2019 was reported:

THE CAR WAS NOT USED OVER THE WEEKEND EXCEPT FOR A 5 MILE TRIP TO CHURCH WHERE IT DID NOT ENCOUNTER ANY ROCKS, HITS, ETC. DROVE HOME AND THE CAR WINDSHIELD WAS FIND. THE NEXT MORNING WHEN I GOT INTO THE CAR, AFTER I USED MY REMOTE TO START AND WARM UP MY OUTBACK, THERE WAS ABOUT AN 8-10 INCH CRACK IN THE WINDSHIELD THAT ORIGINATED FROM BEYOND THE WINDSHIELD WIPER ON THE PASSENGER SIDE OF THE CAR. THE CRACK GREW WORSE TO ABOUT 12 INCHES. CALLED SUBARU DEALER WHO DIRECTED ME TO THEIR WINDSHIELD SERVICE AGENT. TOOK TIME OFF FROM WORK AND THEY INSTALLED OEM GLASS (INSURANCE COVERS THIS) AND CALIBRATED THE WINDSHIELD. AFTER DRIVING HOME, THE CAR MADE WIND TUNNEL NOISES, WINDSHIELD FLUID SYSTEM DID NOT WORK, NAVIGATION DID NOT WORK SO I BROUGHT THE CAR TO THE DEALER (TOOK MORE TIME OFF FROM WORK). THEY FOUND A LEAK IN THE WINDSHIELD, REPAIRED THE FLUID UNIT AND IGNORED THE NAVIGATION ISSUE. THEY SENT ME BACK TO THEIR AGENT. THEY TOOK OUT THE WINDSHIELD REPOSITIONED IT AND SENT ME ON MY WAY. TODAY I FOUND PUDDLES OF WATER ON THE FLOOR OF MY CAR (LEAK), NAVIGATION DOES NOT WORK AND WIND TUNNEL NOISE IS STILL THERE. THIS WINDSHIELD IS SUPPOSED TO PROTECT THE DRIVER AND PASSENGER AS EXTRA SUPPORT FOR THE ROOF, PREVENTION OF OBJECTS FLYING AT YOU AND ALLOW FOR THE EYESIGHT SYSTEM TO DO ITS JOB. THIS CAR IS ONE MONTH OLD AND THE CRACK IN THE WINDSHIELD EXPERIENCE SOUNDS EERILY SIMILAR TO OTHERS' COMPLAINTS. WHEN YOU PAY THE MONEY FOR A TOP SAFETY PICK, YOU WANT THE SAFETY AND I DO NOT HAVE IT.

80. On NHTSA's website where consumer complaints about 2017 Foresters are posted,⁶ the following incident dated March 21, 2018 was reported:

⁵ <https://www.nhtsa.gov/vehicle/2019/SUBARU/OUTBACK/SW/AWD> (last viewed November 10, 2019).

⁶ <https://www.nhtsa.gov/vehicle/2017/SUBARU/FORESTER/SUV/AWD>

OWN A 2017 SUBARU FORESTER, WE HAVE LESS THAN 11,000 MILES AND LESS THAN ONE YEAR OF OWNERSHIP. A SMALL STONE HITTING THE WINDSHIELD, QUICKLY ENDS UP IN A 24" TO 30" LONG LINEAR CRACK UNLIKE MY OTHER TWO VEHICLES. WE ARE IN PROCESS OF REPLACING 3RD WINDSHIELD GLASS IN LESS THAN ONE YEAR. IT APPEARS THAT THERE MAY BE AN OEM DEFECT. THIS LONG CRACK CREATES DANGER VISION PROBLEM. EVERY WINDSHIELD REPLACEMENT REQUIRES RE-CALIBRATION OF EYESIGHT TOO. THIS IS AN ADDITIONAL BURDEN ON INSURANCE AS WELL AS OWNERS AND SHOULD BE ADDRESSED ASAP. MANUFACTURER HAS NOT YET ACKNOWLEDGE THE EXISTENCE OF DEFECTIVE WINDSHIELD. WE REQUEST THAT CONSUMER PRODUCT RECALL INVESTIGATE THIS ISSUE ASAP.

81. The Defect presents a safety concern because it impairs the driver's visibility, impairing the driver's ability to accurately see the road, signage, other vehicles, and potential road hazards. In addition, the cracks are visually distracting to the driver. Impaired visibility is unsafe at any time, particularly when combined with bright sunlight or hazardous weather conditions and when changing lanes, merging onto highways, making turns, and responding to hazards or changing conditions on the road.

Defendants Had Superior and Exclusive Knowledge of the Defect

82. Plaintiffs are informed and believe and based thereon allege that prior to the sale of the Class Vehicles, Defendants knew, or should have known, about the Defect through their exclusive knowledge of non-public, internal data about the Defect, including: pre-release testing data; early consumer complaints about the Defect to Defendants' dealers who are their agents for vehicle repairs; aggregate data from Defendants' dealers; consumer complaints to the NHTSA and resulting notice from NHTSA; dealership repair orders; testing conducted in response to owner or lessee complaints; Technical Service Bulletins issued for a cracked windshield defect on 2015-2016 Subaru Legacy and Outback models; and other internal sources of aggregate information about the problem.

1 ***a. Numerous Consumer Complaints on the NHTSA Demonstrate That***
 2 ***Defendants Aware of the Defect.***

3 83. Federal law requires automakers like Defendants to be in close
 4 contact with NHTSA regarding potential auto defects, including imposing a legal
 5 requirement (backed by criminal penalties) compelling the confidential
 6 disclosure of defects and related data by automakers to NHTSA, including field
 7 reports, customer complaints, and warranty data. *See TREAD Act*, Pub. L. No.
 8 106-414, 114 Stat.1800 (2000).

9 84. Automakers have a legal obligation to identify and report emerging
 10 safety-related defects to NHTSA under the Early Warning Report requirements.
 11 *Id.* Similarly, automakers monitor NHTSA databases for consumer complaints
 12 regarding their automobiles as part of their ongoing obligation to identify
 13 potential defects in their vehicles, including those which are safety-related. *Id.*
 14 Thus, Defendants knew or should have known of the many complaints about the
 15 Defect logged by NHTSA ODI. The content, consistency, and disproportionate
 16 number of those complaints alerted, or should have alerted, Defendants to the
 17 Defect.

18 85. With respect solely to the Class Vehicles, the following are but a
 19 few examples of the many complaints concerning the Defect which are available
 20 through NHTSA's website, www.safercar.gov. Many of the complaints reveal
 21 that Defendants, through their network of dealers and repair technicians, have
 22 been made aware of the Defect. In addition, the complaints indicate that despite
 23 having knowledge of the Defect and even armed with knowledge of the exact
 24 vehicles affected, Defendants often refused to diagnose the defect or otherwise
 25 attempt to repair it while Class Vehicles were still under warranty. When
 26 Defendants did attempt repairs, it merely replaced the windshields with similarly
 27 defective windshields.

28 86. On NHTSA's website where consumer complaints about 2017

Subaru Outbacks are posted,⁷ the following incident posted on December 20, 2016 and dated February 11, 2017 was reported:

STAR CRACK IN WINDSHIELD DISCOVERED STATIONARY (IN CARPORT) THE DAY AFTER PURCHASING THE VEHICLE (ODOMETER READING 200 MILES). LOCATION OF CRACK SLIGHTLY ABOVE WIPER BLADE ON PASSENGER SIDE. IMPACT STRIKE THE SIZE OF A PINHEAD. THE DAMAGE IS CHARACTERISTIC OF PRIOR MODEL YEARS 2015 AND 2016 IN WHICH THE MANUFACTURER INITIATED RECALLS. IT IS APPARENT THIS PROBLEM CONTINUES AND HAS YET TO BE RESOLVED.

87. On July 10, 2017 the following incident dated June 14, 2017 was reported:

OUR WINDSHIELD BEGAN SLOWLY CRACKING STARTING AT THE BASE OF THE DRIVER SIDE FRONT WINDOW. IT BEGAN AT THE BOTTOM EDGE (HEAT STRIP) AND MOVED HALF UP THE WINDSHIELD BEFORE WE REPLACED. COST \$569 FOR OEM WINDSHIELD. SUBARU DEALER DENIED THE WARRANTY CLAIM, WHILE ADMITTING A PROBLEM WITH EARLIER VERSIONS THAT YEAR'S OUTBACK.

88. On August 2, 2017, the following incident dated July 27, 2017 was reported:

WINDOW CRACKED BUT WAS NOT HIT WITH ANYTHING. CRACK APPEARED ON THE DRIVERS SIDE, HALFWAY DOWN THE WINDSHIELD, AND OBSTRUCTS VIEW OF THE DRIVER. CAR HAS LESS THAN 1600 MILES ON IT. DEALER STATED IT WAS NOT COVERED AS A DEFECT AND WE ARE ON OWN OWN TO REPLACE IT. THERE ARE NUMEROUS COMPLAINTS OF SUBARU OUTBACK WINDSHIELDS CRACKING BECAUSE THEY ARE TO THIN. DANGEROUS TO DRIVE DUE TO VISIBILITY ISSUES.

89. On October 5, 2017, the following incident dated September 28, 2017 was reported:

PURCHASED A 2015 OUTBACK AND EXPERIENCED 4 CRACKED WINDSHIELDS IN AN

⁷<https://www.nhtsa.gov/vehicle/2017/SUBARU/OUTBACK/SW/AWD>

1 18 MONTH PERIOD. TRADED THE CAR IN FOR A
 2 2017 OUTBACK HOPING THEY FIXED THE
 3 DESIGN FLAW. NOW 6 MONTHS AFTER 2017
 4 OUTBACK PURCHASE AN OUTRAGEOUS CRACK
 5 FORMED ON THIS NEW VEHICLE. ALL 5 CRACKS
 6 BEGAN NOT FURTHER THAN 2 TO 3 INCHES
 7 FROM THE FRAME. SO 5 CRACKED
 8 WINDSHIELDS IN A 2 YEAR PERIOD FROM
 9 SUBARU OUTBACK.

10 AUTOMOBILES. THE DEALERSHIP AND
 11 MANUFACTURER NEVER WOULD
 12 ACKNOWLEDGE THAT THERE ARE SO MANY
 13 OTHER PEOPLE EXPERIENCING THIS PROBLEM.
 14 SOMETIMES THE CRACK WOULD APPEAR
 15 SPONTANEOUSLY, SOMETIMES IT ACTUALLY
 16 SOUNDED LIKE CRACKLING SOUNDS
 17 HAPPENING IN FRAME AND MAYBE (?) ONE
 18 TIME THERE MIGHT HAVE BEEN A SMALL
 19 PEBBLE HIT THE WINDSHIELD. TWICE I WASN'T
 20 EVEN DRIVING THE VEHICLE. IMPEDES VISION.
 21 DISTRACTS DRIVER.

22
 23 90. On October 19, 2017, the following incident dated October 17, 2017
 24 was reported:

25 I VERY SMALL ROCK CHIP HIT MY WINDSHIELD
 26 INITIALLY CAUSING AN 8 INCH CRACK AND IS
 27 NOW OVER TWO FEET LONG. THE CHIP DID NOT
 28 EVEN LEAVE AN IMPACT MARK; IF YOU TRIED
 RIGHT NOW TO SEE WHERE THE CRACK
 STARTED YOU WOULD NOT BE ABLE TO. I
 REVIEWED FORUMS ONLINE AND HAVE SEEN
 NUMEROUS COMPLAINTS ABOUT OUTBACK
 WINDSHIELDS. WEAK OR CHEAP IS HOW THEY
 WERE OFTEN DESCRIBED. THIS WAS A VERY
 SMALL ROCK CHIP THAT HIT MY WINDSHIELD.
 THIS AMOUNT OF DAMAGE SHOULD NOT HAVE
 HAPPENED. I AGREE WITH THE FORUMS; WEAK
 AND CHEAP. I SEE THERE IS EVEN A CLASS
 ACTION LAWSUIT AGAINST SUBARU.

91. On NHTSA's website where consumer complaints about 2018
 Subaru Outbacks are posted,⁸ the following incident posted on April 29, 2018
 and dated April 28, 2018 was reported:

WINDSHIELD DEVELOPED CRACKED, LOWER
 MID AREA EXTENDED UPWARD ABOUT 12
 INCHES. VEHICLE WAS STATIONARY, PARKED.

⁸ <https://www.nhtsa.gov/vehicle/2018/SUBARU/OUTBACK/SW/AWD>
 (last viewed November 10, 2019).

1 WAS NOT HIT BY ANY ROAD DEBRIS. NOTICED
2 DEFECT WHEN STARTING CAR.

3 92. On May 22, 2018, the following incident dated May 18, 2018 was
4 reported:

5 WINDSHIELD EASILY CRACKS - WE HAVE HAD
6 OUR 2018 OUTBACK FOR LESS THAN 6 MONTHS
7 AND LESS THAN 5000 MILES AND HAVE HAD 3
8 WINDSHIELDS DEVELOP SEVERE CRACKING.
9 THE FIRST TWO WERE REPLACED WITH
10 FACTORY WINDSHIELDS BY PROFESSIONAL
11 INSTALLERS. THE SLIGHTEST IMPACT, THE
12 LAST TWO BEING BARELY PERCEIVABLE,
13 RESULTS IN AN ELONGATED CRACK FORMING.
14 WITH FOUR VEHICLES IN OUR HOUSEHOLD, WE
15 HAVE ONLY HAD 2 WINDSHIELDS REPLACED IN
16 14 YEARS SINCE MOVING TO THIS AREA SO
17 HAVE RULED OUT BAD LUCK OR DRIVING
18 HABIT. SUBARU (BOTH DEALER AND
19 CORPORATE) HAVE BEEN UNRESPONSIVE. THE
20 CURRENT CRACKING AND STAR FORMED
21 AFTER A BARELY AUDIBLE IMPACT. THE STAR
22 GREW AND IS NOW CRUMBLING IN THE CENTER
23 WITH 3 FRACTURE LINES EXTENDING FROM IT.

24 FIRST INCIDENT - ON I-17 WHILE PASSING A
25 SEMI APPROX SPEED 75 MPH

26 SECOND INCIDENT - ON AZ 69 IN NORMAL
27 TRAFFIC APPROX SPEED 45 MPH

28 THIRD INCIDENT - ON I-17 WHILE FOLLOWING A
VEHICLE USING ISIGHT DYNAMIC CRUISE
CONTROL APPROX SPEED 75 MPH

FIRST TWO CLAIMS COVERED BY INSURANCE
WHICH WE ATTRIBUTED TO BAD LUCK. THIRD
INCIDENT IN SO FEW MONTHS/MILES SEEMS TO
POINT TO QUALITY/DESIGN ISSUE SINCE
OTHER VEHICLES (PAST AND PRESENT) HAVE
NEVER DEVELOPED THIS SEVERE CRACKING
(PICTURE PROVIDED) WHICH PROMPTED THIS
COMPLAINT.

93. On July 26, 2018, the following incident dated July 11, 2018 was
reported:

DRIVING INTERSTATE, 65MPH, SMALL OBJECT
THROWN FROM ANOTHER VEHICLE HIT MY
WINDSHIELD ON THE LEFT EDGE. SHORT
CRACKS APPEARED IMMEDIATELY. TWO
SPREAD ALL THE WAY TO THE REAR VIEW

1 MIRROR AREA WITHIN DAYS. VEHICLE IS ONLY
2 TWO MONTHS OLD.

3 94. On December 17, 2018, the following incident dated December 16,
4 2018 was reported:

5 MY WINDSHIELD IS CRACKED FOR THE 2ND
6 TIME NOW IN ITS FIRST YEAR OF OWNERSHIP.
7 THE FIRST TIME IT CRACKED IT WAS BECAUSE
8 OF A PEBBLE STRIKE FROM THE ROAD.
9 EXTREMELY SMALL FRAGMENT STRUCK THE
10 GLASS, MADE A POCK MARK, AND THE
11 WINDSHIELD WAS REPLACED. TODAY, LESS
12 THAN A MONTH LATER A NEW CRACK
13 APPEARED WHILE DRIVING WITHOUT ANY
14 STRIKE FROM AN OBJECT. SUBARU DEALER
15 CLAIMS IT WAS STRUCK BUT FIND A CRACK
16 ONLY WITHOUT ANY POINT ALONG IT OF AN
17 IMPACT MAKES ME VERY VERY SUSPICIOUS.
18 NOW I HAVE TO WAIT FOR THE INSURANCE
19 COMPANY TO SETTLE ON CHARGES AND SEND
20 A CHECK BEFORE THE NEXT WINDSHIELD CAN
21 BE APPLIED. MY WIFE AND I WERE CALMLY
22 DRIVING ON COMPLETELY PAVED ROADS
23 WHEN WE BOTH WATCHED THE CRACK APPEAR
24 AND GROW DURING OUR DRIVE. :-(I HAVE
25 DRIVEN FOR 50+ YEARS, AND OWNED 20+ CARS.
26 I'VE NEVER HAD THIS HAPPEN.

27 95. On December 21, 2018, the following incident dated December 20,
28 2018 was reported:

1 2 WINDSHIELD CRACKS IN LOWER PORTION OF
2 WINDSHIELD DURING 1ST YEAR OF
3 OWNERSHIP. BOTH CRACKS OCCURRED WHILE
4 DRIVING AROUND TOWN ~35 MPH, ONCE
5 DURING A 100 DEGF SUMMER DAY, AND THE
6 OTHER DURING A 40 DEGF RAINY WINTER
7 MORNING. INSPECTION OF CRACK AFTER
8 STOPPING SHOWED POSSIBLE ORIGINATION
9 FROM ~1MM CHIPS.

10 DURING THE SUMMER, THE FIRST CHIP,
11 LOCATED IN THE DE-ICER AREA, GREW
12 RAPIDLY TO A CRACK ACROSS THE
13 WINDSHIELD WITH A LOUD 'POP' SOUND AFTER
14 THE AIR CONDITIONER WAS TURNED ON HIGH
15 USING DEFROSTER AIR MODE. SUBARU OF
16 AMERICA (NOT THE DEALER) REPLACED THE
17 WINDSHIELD AND RECALIBRATED THE
18 EYESIGHT SYSTEM AS A 'GOODWILL' REPAIR.

19 DURING THE WINTER, ANOTHER CHIP

1 BETWEEN THE VIN# DISPLAY WINDOW AND
 2 THE PERIMETER OF THE LOWER WINDSHIELD
 3 EXPLOSIVELY GREW TO A CRACK WHEN
 4 HEATED DEFROSTER AIR WAS ACTIVATED.
 5 REPAIR PENDING.

6 MAIN CONCERN IS THE FRAGILE NATURE AND
 7 TEMPERATURE DEPENDANCE OF THIS GLASS
 8 TEMPER, ESPECIALLY NEAR WINDOW
 9 BOUNDARY CONDITIONS AND WHERE
 10 DEFROSTER AIR IS THE STRONGEST.

11 OVER 20 YEARS OF DRIVING OTHER VEHICLES
 12 ON THE SAME ROUTE HAVE CAUSED LITTLE
 13 CHIPS ON OTHER WINDSHIELDS, BUT NEVER
 14 HAS A CHIP GROWN INTO A CRACK, WITH OR
 15 WITHOUT HOT OR COLD DEFROSTER AIR
 16 HITTING IT. I SUSPECT THAT THE THICKNESS
 17 AND TEMPER OF THE LATEST GENERATION OF
 18 OUTBACK CARLEX WINDSHIELDS WILL
 19 CONTINUE TO CAUSE ISSUES SIMILAR TO TSB#
 20 12-192-15R.

21 96. On January 17, 2019, the following incident dated January 17, 2019
 22 was reported:

23 A TINY PEBBLE STRUCK THE WINDSHIELD ON
 24 THE INTERSTATE, BUT IT SUDDENLY GREW TO
 25 A CRACK APPROXIMATELY 6 INCHES LONG.
 26 NEVER HAD THIS PROBLEM BEFORE, AND MY
 27 CAR IS FAIRLY NEW ON THE ROAD (LESS THAN
 28 8,000 MILES, BOUGHT IN JULY, 2018). DEEPLY
 CONCERNED THAT SUBARU STILL HAS NOT
 FIGURED OUT ITS NOTORIOUS WINDSHIELD-
 RELIABILITY PROBLEM THAT HAS
 FRUSTRATED SO MANY DRIVERS
 THROUGHOUT THE PAST 5 YEARS.

97. On February 16, 2019, the following incident dated February 16,
 2019 was reported:

SECOND CRACKED WINDSHIELD IN ONE WEEK.
 FIRST ONE WAS REPLACED 2/8/18. BOTH TIMES
 TRAVELED AT LOW TO MODERATE SPEED 25-40
 MPH ON LOCAL FWY IN LOS ANGELES, CA.
 SUNNY MILD, DRY CONDITIONS, NO WIND.
 SMALL PEBBLE HIT WINDSHIELD. COULDN'T
 SEE HIT, ONLY HEARD A SMALL CRACK SOUND.
 DAMAGED WINDSHIELD, FIRST TIME SMALL
 PEBBLE MARK GREW TO LONG CRACK. INITIAL
 IMPACT SIZE ABOUT 1.5 - 2 MM. ONE WEEK
 LATER ANOTHER PEBBLE HIT WINDSHIELD IN
 SLOW TRAFFIC, 35 MPH, NO TRUCKS NEAR BY.

1 SAME SIZE OF MARK. SUBARU REQUIRES THEIR
 2 WINDSHIELD REPAIR AT CUSTOMER COST OF
 3 \$930. WARRANTY DOES NOT COVER ANY
 4 DEBRIS DAMAGE, BUT SMALL PEBBLES
 5 SHOULD NOT CAUSE THIS KIND OF DAMAGE
 6 AND COSTS. HAD A GRAND CHEROKEE 184K
 7 MILES AND NEVER A CRACK OR DING, NEVER
 8 ISSUE FOR OUR 2005 SAAB, OR ANY OREVIOUS
 9 VEHICLE. SHOULD NOT COST US \$1860 MONTH
 10 ADDITIONAL TO MAINTAIN CAR, PLUS SAFETY
 11 ISSUE. ACCORDING TO SUBARU CORPORATE:
 12 DOES NOT RECOMMEND US TO DRIVE IT WITH
 13 I-SITE CAMERA WITH A DAMAGED
 14 WINDSHIELD. THEY SAY THAT THE GLASS IS
 15 THINNER/LIGHTER IN ORDER TO WORK WITH
 16 CAMERA AND BE MORE FUEL
 17 EFFICIENT/LIGHTER. CARS SHOULD BE ABLE
 18 TO WITHSTAND NORMAL DRIVING AND ROAD
 19 CONDITIONS.

20 98. On NHTSA's website where consumer complaints about 2019
 21 Subaru Outbacks are posted,⁹ the following incident posted on January 24, 2019
 22 and dated January 7, 2019 was reported:

23 THE CAR WAS NOT USED OVER THE WEEKEND
 24 EXCEPT FOR A 5 MILE TRIP TO CHURCH WHERE
 25 IT DID NOT ENCOUNTER ANY ROCKS, HITS, ETC.
 26 DROVE HOME AND THE CAR WINDSHIELD WAS
 27 FIND. THE NEXT MORNING WHEN I GOT INTO
 28 THE CAR, AFTER I USED MY REMOTE TO START
 AND WARM UP MY OUTBACK, THERE WAS
 ABOUT AN 8-10 INCH CRACK IN THE
 WINDSHIELD THAT ORIGINATED FROM
 BEYOND THE WINDSHIELD WIPER ON THE
 PASSENGER SIDE OF THE CAR. THE CRACK
 GREW WORSE TO ABOUT 12 INCHES. CALLED
 SUBARU DEALER WHO DIRECTED ME TO THEIR
 WINDSHIELD SERVICE AGENT. TOOK TIME OFF
 FROM WORK AND THEY INSTALLED OEM
 GLASS (INSURANCE COVERS THIS) AND
 CALIBRATED THE WINDSHIELD. AFTER
 DRIVING HOME, THE CAR MADE WIND TUNNEL
 NOISES, WINDSHIELD FLUID SYSTEM DID NOT
 WORK, NAVIGATION DID NOT WORK SO I
 BROUGHT THE CAR TO THE DEALER (TOOK
 MORE TIME OFF FROM WORK). THEY FOUND A
 LEAK IN THE WINDSHIELD, REPAIRED THE
 FLUID UNIT AND IGNORED THE NAVIGATION
 ISSUE. THEY SENT ME BACK TO THEIR AGENT.
 THEY TOOK OUT THE WINDSHIELD
 REPOSITIONED IT AND SENT ME ON MY WAY.

⁹ <https://www.nhtsa.gov/vehicle/2019/SUBARU/OUTBACK/SW/AWD>
 (last viewed November 10, 2019).

1 TODAY I FOUND PUDDLES OF WATER ON THE
 2 FLOOR OF MY CAR (LEAK), NAVIGATION DOES
 3 NOT WORK AND WIND TUNNEL NOISE IS STILL
 4 THERE. THIS WINDSHIELD IS SUPPOSED TO
 5 PROTECT THE DRIVER AND PASSENGER AS
 6 EXTRA SUPPORT FOR THE ROOF, PREVENTION
 7 OF OBJECTS FLYING AT YOU AND ALLOW FOR
 8 THE EYESIGHT SYSTEM TO DO ITS JOB. THIS
 9 CAR IS ONE MONTH OLD AND THE CRACK IN
 10 THE WINDSHIELD EXPERIENCE SOUNDS
 11 EERILY SIMILAR TO OTHERS' COMPLAINTS.
 12 WHEN YOU PAY THE MONEY FOR A TOP SAFETY
 13 PICK, YOU WANT THE SAFETY AND I DO NOT
 14 HAVE IT.

8 99. On January 11, 2019, the following incident dated February 15,
 9 2019 was reported:

10 WINDSHIELD SPONTANEOUSLY CRACKED AT
 11 THE BASE OF THE WINDSHIELD, UNDER THE
 12 WIPER BLADE WHILE DRIVING ON THE
 13 HIGHWAY. I WAS NOT FOLLOWING ANY
 14 VEHICLES SO A ROCK CHIP COULD NOT BE THE
 CAUSE. THIS IS POOR WINDSHIELD QUALITY
 AND DESIGN BY SUBARU.

15 100. On April 10, 2019, the following incident dated March 27, 2019 was
 16 reported:

17 ON TWO SEPARATE OCCASIONS, SOMETHING
 18 WAS KICKED UP AND HIT THE WINDSHIELD OF
 19 THE VEHICLE. BOTH TIME AN IMMEDIATE
 20 CRACK WAS SENT THROUGHT THE
 21 WINDSHIELD. BOTH TIMES WERE ON AN
 22 HIGHWAY, TRAVELING ABOUT 45MPH. I HAVE
 23 HAD THINGS POP UP AND HIT MY WINDSHIELD
 IN OTHER VEHICLES AND MAYBE THEY JUST
 CHILL OR STAR . I FEEL THERE IS A
 SIGNIFICANT DIFFERENCE IN THE STRENGTH
 OF THE GLASS THAT IS USED, IN THIS VEHICLE
 I FEEL IT IS EXTREMELY WEAK.

24 101. On April 12, 2019, the following incident dated April 10, 2019 was
 25 reported:

26 ON 4/10/19 AS I WAS GETTING INTO MY CAR, I
 27 NOTICED A HUGE CRACK ON MY DRIVER SIDE
 28 OF THE WINDSHIELD THAT STARTS FROM THE
 BASE RUNNING TOWARD THE CENTER OF THE
 WINDSHIELD. THE CAR WAS BOUGHT ON JAN
 20TH OF 2019 AND HAS 4200 MILES. CALLED

1 SAFELITE AND THEY ARE ESTIMATING \$1300+
2 TO REPLACE.

3 102. On April 19, 2019, the following incident dated April 17, 2019 was
4 reported:

5 MY CONCERN IS WITH THE QUALITY AND
6 SAFETY OF THE WINDSHIELD ON THE 2019
7 SUBARU OUTBACK. I PURCHASED A 2019
8 SUBARU OUTBACK ON 12/31/18. IT NOW HAS
9 3200 MILES ON IT. ON 04/17/19 I NOTICED AN 8-10
10 INCH CRACK IN THE WINDSHIELD. THERE WAS
11 A VERY SMALL, BARELY NOTICEABLE, CHIP
12 WITHIN THE CRACK. AT NO TIME DID I HEAR
13 ANYTHING HIT THE WINDSHIELD WHILE
14 DRIVING. THEREFORE, A CRACKED
15 WINDSHIELD WAS SHOCKING AND ENTIRELY
16 UNEXPECTED FROM SUCH MINIMAL CONTACT
17 WITH THE WINDSHIELD. WHEN THE CAR IS NOT
18 IN USE IT IS GARAGE KEPT. MY COMMUTE HAS
19 NOT CHANGED SINCE BUYING THIS CAR AND I
20 HAVE NEVER HAD A CAR WINDSHIELD CRACK
21 IN OVER 30 YEARS OF DRIVING. DUE TO THE
22 SIZE OF THE CRACK, THE ENTIRE WINDSHIELD
23 MUST BE REPLACED AND THE SUBARU
24 "EYESIGHT" SYSTEM RE-CALIBRATED. IT IS MY
25 OPINION THAT THE WINDSHIELD SHOULD NOT
26 HAVE CRACKED IN THIS SITUATION. A SIMPLE
27 GOOGLE SEARCH INDICATES THAT OTHERS
28 HAVE CONCERNS WITH THE 2019 SUBARU
OUTBACK WINDSHIELD.

103. On NHTSA's website where consumer complaints about 2017
Subaru Foresters are posted,¹⁰ the following incident posted on February 10,
2018 and dated January 26, 2018 was reported:

21 THE WINDSHIELD SPONTANEOUSLY CRACKED,
22 MIDDLE PASSENGER SIDE (NOT AWARE WHEN
23 IT HAPPENED. ONE TIME CAME OUT INTO THE
24 GARAGE AND NOTICED IT WAS CRACKED). IT
25 ALSO WAS SEVERELY CHIPPED ONE TIME
BEFORE (2500 MILES). SO IT HAS HAD TO BE
REPLACED 2 TIMES WITHIN 16,000 MILES AND
LESS THAN ONE YEAR OWNERSHIP.

104. On February 22, 2018, the following incident dated February 12,
2018 was reported:

¹⁰ <https://www.nhtsa.gov/vehicle/2017/SUBARU/FORESTER/SUV/AWD>
(last viewed November 10, 2019).

1 WHILE DRIVING SUBARU FORESTER 2017, A
 2 SMALL ROCK HIT THE WINDSHIELD AND
 3 SMALL CRACK QUICKLY TURNED INTO 24" TO
 4 30" LONG LINEAR CRACK AND AS A RESULT
 5 ENDED UP REPLACING WIND SHIELD GLASS
 6 AND RE-CALIBRATION OF EYESIGHT. THIS
 7 HAPPENED TWICE IN LAST 8 MONTHS. IT
 8 APPEARS TO BE AN OEM ISSUE. UNLIKE MY
 9 OTHER TWO VEHICLES, THEY HAD SIMILAR
 10 ISSUE HOWEVER THE CRACK WAS SHIELD BY
 11 PROFESSIONALS AND NEVER DEVELOPED
 12 LINEAR CRACK.

13 105. On March 21, 2018, the following incident dated March 21, 2018
 14 was reported:

15 OWN A 2017 SUBARU FORESTER, WE HAVE LESS
 16 THAN 11,000 MILES AND LESS THAN ONE YEAR
 17 OF OWNERSHIP. A SMALL STONE HITTING THE
 18 WINDSHIELD, QUICKLY ENDS UP IN A 24" TO 30"
 19 LONG LINEAR CRACK UNLIKE MY OTHER TWO
 20 VEHICLES. WE ARE IN PROCESS OF REPLACING
 21 3RD WINDSHIELD GLASS IN LESS THAN ONE
 22 YEAR. IT APPEARS THAT THERE MAY BE AN
 23 OEM DEFECT. THIS LONG CRACK CREATES
 24 DANGER VISION PROBLEM. EVERY
 25 WINDSHIELD REPLACEMENT REQUIRES RE-
 26 CALIBRATION OF EYESIGHT TOO. THIS IS AN
 27 ADDITIONAL BURDEN ON INSURANCE AS WELL
 28 AS OWNERS AND SHOULD BE ADDRESSED
 ASAP. MANUFACTURER HAS NOT YET
 ACKNOWLEDGE THE EXISTENCE OF
 DEFECTIVE WINDSHIELD. WE REQUEST THAT
 CONSUMER PRODUCT RECALL INVESTIGATE
 THIS ISSUE ASAP.

106. On NHTSA's website where consumer complaints about 2018
 Subaru Foresters are posted,¹¹ the following incident posted on September 7,
 2018 and dated September 4, 2018 was reported:

WINDSHIELD CRACKED ALL THE WAY ACROSS
 FROM THE TINIEST LITTLE DING FROM A ROCK.

107. On November 2, 2018, the following incident dated September 1,
 2018 was reported:

THE WINDSHIELD SIMPLY CRACKED UNDER

¹¹ <https://www.nhtsa.gov/vehicle/2018/SUBARU/FORESTER/SUV/AWD>
 (last viewed November 10, 2019).

1 THE PASSENGER WIPER AND QUICKLY SPREAD
2 ACROSS THE WINDSHIELD. THERE WAS NO
3 VIABLE IMPACT AND IT APPEARED
4 OVERNIGHT. THIS HAPPENED IN EARLY
5 SEPTEMBER AND WE ARE STILL WAITING FOR
6 AN OEM REPLACEMENT FROM SUBARU.

7
8 108. On March 17, 2019, the following incident dated December 21,
9 2018 was reported:

10 I PURCHASED THIS CAR 7/31/18. ON 12/21/18
11 (ODOMETER 3,427 MILES), THE FIRST MORNING
12 WITH A HARD FROST, I FOUND THAT MY 2018
13 SUBARU FORESTER (STATIONARY AND
14 PARKED IN MY DRIVEWAY) HAD DEVELOPED A
15 CRACK OVERNIGHT FROM THE LOWER LEFT
16 CORNER OF THE DRIVER'S SIDE UPWARD. (NO
17 CRACK THE DAY BEFORE) I DROVE THE CAR 3
18 MILES TO WORK, CALLED THE DEALERSHIP
19 WHERE I PURCHASED IT, AND SCHEDULED A
20 SERVICE MANAGER EVALUATION
21 APPOINTMENT THAT MORNING. I DROVE 12
22 MORE MILES TO THE DEALERSHIP. IN UNDER 3
23 HOURS, DRIVING TOTAL 15 MILES, SINCE
24 DISCOVERING THE CRACK AND ARRIVING AT
25 THE DEALERSHIP, THE CRACK HAD
26 PROGRESSED UP AND ACROSS THE DRIVER'S
27 SIDE OF THE WINDSHIELD. THE SERVICE
28 MANAGER AGREED TO REPLACE THE
WINDSHIELD AT NO COST TO ME, "AS A ONE-
TIME GOOD WILL GESTURE". HE POINTED TO
THE BASE OF THE CRACK WHICH BEGAN AT
THE BOTTOM OF THE BLACK AREA BORDERING
THE BASE OF THE WINDSHIELD, CLAIMED HE
COULD SEE A CHIP, AND DUG HIS PEN INTO THE
GLASS TO ENLARGE THE CRACK. TO ME, THIS
ARE LOOKED MORE A FLAW IN THE GLASS
WHERE BROKEN WINDSHIELD MAY HAVE HAD
A FLAW HAD FLEXED DUE TO THE FREEZING
WEATHER. HE DESCRIBED THE DAMAGE AS A
CHIP ON MY REPAIR TICKET, WHICH IS
MISLEADING IF AN ANALYSIS IS DONE ON THE
CRACK, BUT IT SUPPORTS THE TICKET'S NOTE
THAT THIS WAS A 1-TIME REPAIR AT NO
CHARGE, WITH NO GUARANTEE OF FUTURE
SIMILAR REPAIRS. THE DEALER DELAYED THE
REPAIR DUE TO CHRISTMAS, AND THE CRACK
CONTINUED TO PROGRESS ACROSS THE
WINDSHIELD. REPLACEMENT INSTALLATION
SCHEDULED FOR 12/26/18. ARRIVING FOR MY
APPOINTMENT I WAS TOLD THE WINDSHIELD
WAS ORDERED BUT THE DEALER FAILED TO
SCHEDULE AN INSTALLER. THEY KEPT MY CAR
UNTIL THE REPAIR WAS COMPLETED ON
12/28/19. THEY PROVIDED A LOANER CAR.

1 RESEARCHING SUBARU WINDSHIELD CRACKS
2 ONLINE, I LEARNED THAT SUBARU
3 WINDSHIELDS HAVE A PROBLEM WITH
4 SPONTANEOUSLY CRACKING, BEGINNING
5 WITH A 2016 OUTBACK RECALL, BUT FORESTER
6 OWNERS ALSO ARE REPORTING CRACKS.

7
8 109. On March 18, 2019, the following incident dated March 13, 2019
9 was reported:

10 OUR WINDSHIELD CRACKED SPONTANEOUSLY,
11 STARTING AT THE WIPER PARK HEATER ON
12 THE DRIVER SIDE. THE CAR WAS PARKED IN A
13 PARKING GARAGE WHEN THE CRACK
14 SPONTANEOUSLY APPEARED.

15 110. On NHTSA's website where consumer complaints about 2019
16 Subaru Foresters are posted,¹² the following incident posted on February 5, 2019
17 and dated January 31, 2019 was reported:

18 I AM HERE TO REPORT MY 2019 SUBARU
19 FORRESTER WINDSHIELD CRACK. I THE CAR IS
20 ONLY 1 MONTH OLD AND WE FOUND THE
21 CRACK IN THE MORNING WHILE SITTING IN
22 THE DRIVEWAY I HEARD THE SAME PROBLEM
23 HAPPENS ON 2015 OUTBACK I CALLED THE
24 SHOP AND THEY TOOK PICTURES AND THEY
25 DID NOT FIND ANY CHIPS THAT WOULD
26 INDICATE A ROCK OR PEBBLE HIT THE CAR
27 AND SAID THEY WILL CALL SUBARU AND GET
28 BACK TO ME

111. On March 8, 2019, the following incident dated February 13, 2019
was reported:

WINDSHIELD CRACKED FOR NO REASON
NOTHING HIT IT WENT TO DEALER NO HELP
FROM THEM TOOK CAR TO GLASS EXPERT .
SAID WINDSHIELD WAS NOT HIT
(SPONTANEOUS CRACK) HAPPENS ON 02/13/2019
FOUND OUT NO REPLACEMENT IN THE USA.
WINDOW OUT OF CAR 02/26/2019)SUBARU NO
HELP LEFT WITHOUT CAR

112. On March 13, 2019, the following incident dated March 12, 2019

¹² <https://www.nhtsa.gov/vehicle/2019/SUBARU/FORESTER/SUV/AWD>
(last viewed November 10, 2019).

1 was reported:

2 WHILE DRIVING ON THE FREEWAY, THERE
3 WERE SOME BUMPS ON THE ROAD AND
4 SUDDENLY A CRACKLING NOISE AND A
5 VERTICAL CRACK DEVELOPED ON THE DRIVER
6 SIDE WINDSHIELD. THE CRACKED RUN FROM
7 THE UPPER RIGHT CORNER TOWARDS THE
8 BOTTOM OF THE WINDSHILED.

9
10 113. On March 14, 2019, the following incident dated January 1, 2019
11 was reported:

12 WINDSHIELD CRACK AND ROCK CHIP. THE
13 SUBARU OEM WINDSHIELD IS VERY WEAK AND
14 I'VE ALREADY NOTICED A CHIP ON THE
15 WINDSHIELD FOR A CAR THAT IS 5 MONTHS
16 OLD. SEVERAL OWNERS HAVE ALREADY FILED
17 A COMPLAINT FOR THE PREVIOUS YEARS, AND
18 ITS THE SAME FOR 2019 AS WELL.

19
20 114. On March 15, 2019, the following incident dated January 5, 2019
21 was reported:

22 BOUGHT THE CAR 11/23/2018, AND IN JANUARY
23 2019 THE WINDSHIELD CRACK FROM THE
24 BOTTOM UP AND BRANCH OUT FOR NO
25 REASON. THE CAR PARKED INSIDE OF OUR
26 GARAGE. CONTACTED SUBARU HQ AND
27 DEALERSHIP SUBARU OF ONTARIO
28 CALIFORNIA, BOTH DENIED THE WINDSHIELD
HAS ANY DEFECT. AND THE DEALERSHIP
SERVICE MANAGER ONLY LOOKED AT IT 2
SECONDS AND SAID IT'S IMPACTED!!

115. On April 1, 2019, the following incident dated April 1, 2019 was
reported:

THE FORESTER ARRIVED TO US FROM THE
DEALERSHIP WITH A CRACKED WINDSHIELD.
IT WAS REPLACED BY THE DEALERSHIP. THE
REPLACEMENT WAS CRACKED WITHIN A DAY
OF DRIVING THE VEHICLE. THERE SEEMS TO BE
AN ONGOING ISSUE WITH THE 2019 SUBARU
FORESTER WINDSHIELDS. BOTH TIMES OF
INCIDENT THE VEHICLE WAS IN MOTION ON
THE HIGHWAY AND WAS IMPACTED BY A VERY
SMALL ROCK - YET THE ENTIRE WINDSHIELD
BECAME DAMAGED.

116. On NHTSA's website where consumer complaints about 2017 Subaru Legacies are posted,¹³ the following incident posted on July 6, 2017 and dated July 6, 2017 was reported:

HELLO,

I HAVE NOTICED AN ISSUE WITH 2017 SUBARU LEGACY WINDSHEILDS. WHEN THE OUTSIDE TEMPERATURE IS ABOVE 88°F AND THE "AUTO" CLIMATE CONTROL IS SET TO 68°C THE DIFFERENCE IN THE TEMPERATURE BETWEEN THE OUTSIDE AIR, AND THE COOLING INSIDE AIR DRAMATICALLY INCREASES THE WEAKNESS AND BRITTLINESS OF THE WINDSHIELD, SUCH THAT WHEN SOMETHING HITS IT, IT ALMOST INSTANTANEOUSLY CRACKS MORE THAN 7-8 INCHES IN LENGTH. I AM NOW HAVING MY SECOND WINDSHIELD REPLACED IN THE LAST 2 MONTHS BECAUSE OF THIS ISSUE.

BOTH TIMES I WAS DOING ABOUT 70MI/HR ON I-94...I KNOW WINDSHEILDS CRACK WHEN SOMETHING HITS THEM, BUT THIS WAS DIFFERENT THE STRIKE WAS BARELY NOTICEABLE, SOMETHING THAT IF CONDITIONS WERE COOLER OR THE TEMPERATURE EQUALIZED, I DON'T THINK THE THERMODYNAMICS WOULD BE RIGHT FOR.

117. On June 12, 2018, the following incident dated June 12, 2018 was reported:

NEW 2017 SUBARU LEGACY WAS BOUGHT IN MAY 2017. WITH IN A MONTH, WINDSHIELD CRACKED WHEN THE CAR WAS STATIONARY IN A SHOPPING MALL PARKING LOT. DEALER DID NOT COVER STATING IT WAS ROCK HIT. IT GOT FIXED WITH INSURANCE CLAIM. AFTER FIXING IT, THE SAME DAY EVENING IN THE OFFICE PARKING LOT, IT CRACKED AT THE SAME SPOT. WITH COURTESY OF THE THE REPAIRER IT WAS CHANGED WITH WARRANTY. NOW, EXACTLY AFTER ONE YEAR, WHILE DRIVING ON THE HIGHWAY, HEARD LOUD NOISE AS IF MY TIRE GOT BURST. WHILE LOOK AROUND I SAW THE WINDSHIELD CRACK AT THE SAME SPOT. IT

¹³<https://www.nhtsa.gov/vehicle/2017/SUBARU/LEGACY/4%252520DR/AWD> (last viewed November 14, 2019).

CAN NOT BE COINCIDENT TO HAPPEN 3 CRACKS
AT THE SAME SPOT.

118. On NHTSA's website where consumer complaints about 2018 Subaru Legacies are posted,¹⁴ the following incident posted on April 4, 2019 and dated March 25, 2019 was reported:

THE SUBARU LEGACY WINDSHIELD IS EXTREMELY BRITTLE, SMALL SALT DEBRIS CAUSED THE WINDSHIELD TO HAVE SEVERAL CHIPS ALL OVER THE WINDSHIELD, IN ALL MY YEARS I'VE NEVER SEEN WINDSHIELDS BEING THIS BRITTLE. THERE ARE THOUSANDS OF COMPLAINTS ON SUBARU FORUMS ABOUT WINDSHIELDS THAT HAVE THE EYESIGHT EQUIPPED THAT THEY ARE PRONE TO CRACKING AND CHIPPING EASILY. RECENTLY SUBARU LOST A LAWSUIT ABOUT THEIR WINDSHIELD CRACKING ON THE 2015 AND 2016 SUBARU OUTBACKS, I BELIEVE SUBARU HAS NOT ADDRESSED THIS ISSUE YET.

WHILE I WAS DRIVING ON THE HIGHWAY ON MY WAY TO VACAVILLE CALIFORNIA MY WINDSHIELD ENDED UP WITH AT LEAST DOZENS OF CHIPS ALL OVER MY WINDSHIELD. THIS IS UNACCEPTABLE BECAUSE I'VE MADE THIS TRIP COUNTLESS AMOUNT OF TIMES ON MY OLD CAR AND NEVER HAD THIS ISSUE.

119. On NHTSA's website where consumer complaints about 2019 Subaru Legacies are posted,¹⁵ the following incident posted on November 7, 2018 and dated November 4, 2018 was reported:

MY CAR IS 2 WEEKS OLD. I USED THE DEFROSTER ON SATURDAY NIGHT AND ON SUNDAY MORNING THERE WAS A CRACK ON MY WINDSHIELD FROM THE BOTTOM CENTER. UP AND TO THE PASSENGER'S SIDE. I DO NOT HEAR A STONE HIT MY WINDSHIELD WHILE DRIVING. SUBARU SAID IT WAS A STONE AND IS CHARGING ME OVER \$700.00 TO REPLACE IT. I HAVE BEEN DRIVING FOR MANY YEARS AND HAVE NEVER GOTTEN A CRACK LIKE THIS. I BELIEVE IT IS A FAULTY WINDSHIELD THAT

¹⁴<https://www.nhtsa.gov/vehicle/2018/SUBARU/LEGACY/4%252520DR/AWD> (last viewed November 14, 2019).

¹⁵<https://www.nhtsa.gov/vehicle/2019/SUBARU/LEGACY/4%252520DR/AWD> (last viewed November 14, 2019).

1 CRACKED WITH THE CHANGE IN
2 TEMPERATURE.

3 120. On November 27, 2018, the following incident dated November 23,
4 2018 was reported:

5 THE VEHICLE IS LESS THAN ONE MONTH OLD
6 AND IT WAS FOUND ONE MORNING WITH AN 8
7 INCH CRACK IN THE WINDSHIELD. THERE WAS
8 NO IMPACT MADE ON THE WINDSHIELD. THE
9 CRACK IS COMING FROM THE BOTTOM LEFT
10 CORNER AND GOES TOWARDS THE CENTER.

11 **Customer Complaints on Third-Party Websites**

12 121. Consumers similarly complained about the defect on various online
13 forums. Below are some examples.

14 122. In a forum for 2017 Subaru Outbacks titled "Cracked Windshield"¹⁶
15 on carcomplaints.com, consumers posted as follows:

16 a. A consumer wrote on December 14, 2016:

17 This crack appeared suddenly on the lower right side
18 (passenger side) of windshield of my 2017 Subaru
19 Outback, and could be observed actually spreading
20 toward the lower center after just having left my garage
21 3 or 4 minutes earlier into a snow storm.

22 There had been no sound of any impact on the vehicle
23 since leaving the garage.

24 Upon close inspection of the cracked windshield there
25 appeared to be a tiny ding in the midst of the crack. I was
26 not aware of any prior impact of any hard objeggglct to
27 this windshield.

28 I am disturbed about how a tiny (less than centimeter)
ding could result in a crack that resulted in need for
windshield replacement so soon after purchasing (3000
miles) the car. I am also unaware of any warranty with
Subaru that would have covered the cost of replacement.
A claim was made to my auto insurance. My windshield
was replaced.

Please see complaints of further windshield damages
requiring repairs, and a current crack to the replacement
windshield which has not yet been repaired (probably

¹⁶https://www.carcomplaints.com/Subaru/Outback/2017/windows_windshield/cracked_windshield.shtml (last viewed November 13, 2019).

will require another replacement).

b. Another consumer wrote on July 26, 2019:

While driving down the highway July 2017, a very small rock hit within bottom 2 inches (near the center) of the windshield that over the course of a few days grew. Took it in and due to the eye sight re-calibration had to pay \$1600.00 to have it repaired by the dealer. This past week, with a bump of my hand on the front windshield it cracked again! Seriously, hitting with window with my bare hand, with little force SHOULD NEVER CAUSE THE WINDOW TO CRACK. My insurance deductible is \$1,000 so hardly worth reporting it. The cost to replace is exorbitant. After doing some research online I find that that easily cracked wind shields are a common problem. I can't keep replacing my windshield at \$1,600 a pop!

123. In a forum for 2018 Subaru Outbacks titled "Windshield Cracks Easily"¹⁷ on carcomplaints.com, consumers posted as follows:

a. A consumer wrote on May 13, 2018:

Our Subaru was about 2 weeks old when while on a drive on a paved highway a crack suddenly appeared on passenger side of windshield. We had not experienced any indication of getting hit by a rock, etc. It seemed to come from the edge and extended in a curved pattern about 8 inches. The crack grew to about 12 inches.

Went to local Subaru dealer in Rapid City, SD the next day. The service tech traced the crack with a ball point pen and found a "star" indicating a rock chip very near the side edge of the windshield where the crack appeared to start. Since they don't replace windshields at their dealership they referred us to the local Safelite shop. They confirmed that it was a rock chip & replaced the windshield with what they told us was an OEM Subaru windshield. Since the car has "Eyesight" potentially it may have had to be recalibrated, but in our case it did not, which saved us a few hundred \$\$.

Incidentally, within one week of the windshield replacement we had a known rock hit the windshield while driving on a paved highway when we met a pickup truck and saw & heard the rock hit. It left a chip which we had repaired by the same Safelite shop the following day.

b. Another consumer wrote on May 17, 2018:

¹⁷https://www.carcomplaints.com/Subaru/Outback/2018/windows_windshield/windshield_cracks_easily.shtml (last viewed November 13, 2019).

1 I know on the first event of the windshield cracking, a
2 pebble hit in while on the highway. We had it back for 7
3 days when it happened again, got it back last Friday and
4 it happened again (today is Thursday 5/17). I know the
5 dealer claims a pebble hit it the second time, and I am
6 sure they will this time. I cannot imagine how a pebble
7 can cause this, been driving many years and have noted
8 this happen previous and have had many pebbles hit my
9 windshields over the years. I suspect faulty glass, I
10 shared that with the dealer but no success. I will examine
11 options under Virginia's Lemon law. Each time this
12 occurs it takes the car away for 2 days as with all the
13 technology the windshield must be calibrated as well.

14 c. Another consumer wrote on June 1, 2018:

15 I had just drove off the lot and not 24 hrs. past brand new,
16 got hit by a small rock...I thought it was a bug didn't even
17 flinch and then a little thud afterwards 3 mins....crack
18 appeared to move all the way across my vision. 12 inches
19 immediately.

20 d. Another consumer wrote on July 22, 2018:

21 This is my second Subaru in 1 year. My 2017 was totaled
22 by hail (all the windows were knocked out). We were
23 driving on the highway, and we got hit with a small rock.
24 It hit right at the bottom, and it instantly started to crack.
25 Within 30 seconds, it grew to well over 12 inches. It was
26 a very small rock, that should've only been a starburst of
27 a ding, and easily fixed. My 2017, had the exact same
28 crack before it was totaled out from hail. I actually had a
pending insurance claim to get the windshield fixed
because they cost around \$600-\$700 to replace.

The car has less then 500 miles and I already have to get
the windshield replaced. I read there was a pending
lawsuit on other Outback years, and obviously, nothing
has changed. I even have the windshield coverage for the
outback, but it only covers dings, not large cracks. Didn't
even stand a chance.

e. Another consumer wrote on September 18, 2018:

I am here to report my 2018 Subaru Outback windshield
crack. I heard the same problem happens on 2015
Outback (I owned one before). So I found the document
from Internet, Subaru 12-192-15R, about extend
warranty for 2015 windshield. I took the file to a Subaru
shop, they just refused 2018 has the same problem - no
same warranty. Now I don't know what to do.

124. In a forum for 2018 Subaru Outbacks titled “Cracked Windshield”¹⁸ on carcomplaints.com, consumers posted as follows:

a. A consumer wrote on December 27, 2018:

I had replaced my first windshield within 48 hrs of driving the car off the lot brand new....not even a year old now and another crack has appeared. I am going to replace it with an independent dealer without using Subaru's Abra who over charged me exorbitantly... \$313.45 which was supposedly just 50% of the total told to me by Subaru). Abra didn't give me any warranty and says needs to be replaced at full cost to me.

Again...hard to see if a rock hit it, it was raining and cold outside on the highway...didn't hear a rock again.

b. Another consumer wrote on April 19, 2019:

I have a spontaneous crack in my windshield, driver's side, starting in the upper left hand of the front windshield and going diagonally to my eyesight line, then the crack continues horizontally. Both legs of the crack are at least 6-7 inches in length. The crack happened while stored in my garage for the night. No stones or rocks hit my windshield before the crack. I went to drive it the next morning and there it was.

There was a class action lawsuit against Subaru for faulty windshields that would crack for no reason on the 2015-2016 Outback & Legacy models. I think this problem is still happening.

c. Another consumer wrote on April 29, 2019:

Windshield cracked just sitting at work parking lot. Staring from the frame on the driver side small fine S curve at first about 20” but couple days later expanding halfway across the glass. Called the dealer and it is clear that they are well aware of the problem and referred me to a designated person handling just windshields. Being very careful with her instruction basically assuming no responsibility unless you have some kind of “extension” on your warranty. Basically instructing me to Subaru America. She did way to bring the car to the dealer so they can determine the cause. I am not sure what are their methods and what they can determine. Possibly just collecting data so they Subaru can address this with their

¹⁸https://www.carcomplaints.com/Subaru/Outback/2018/windows_windshield/cracked_windshield.shtml (last viewed November 13, 2019).

1 glass supplier. Cost estimated at \$2000. This is clearly
 2 not an isolated incident and I hope that there is a class
 3 action suit on the way to address this issue. Very
 4 frustrating and expansive repair. I currently own two and
 5 this is my third Subaru and possibly last.

6 125. In a forum for 2019 Subaru Outbacks titled "Windshield Crack"¹⁹
 7 on carcomplaints.com, consumers posted as follows:

8 a. A consumer wrote on November 24, 2018:

9 Returning from Rochester and a crack appears in the
 10 corner of the windshield by the passenger about 4-5
 11 inches long. The next morning it's like 18 inches. There
 12 is no ding, no star, no full moon or half moon. I will
 13 update after I take it to a dealer.

14 b. Another consumer wrote on January 11, 2019:

15 I am writing to express my concern regarding the quality
 16 of the Subaru Outback windshield. On December 21,
 17 2018 I purchased my first Subaru. On January 11, 2019
 18 my windshield spontaneously cracked below the wipers
 19 and spread very quickly. Because it was obstructing my
 20 view I had to have the entire windshield replaced.

21 On February 15, 2019, four days after the windshield was
 22 replaced, I received a rock chip that immediately cracked
 23 to a size larger than a dollar bill, beyond repair. I had
 24 expected better from the Subaru brand. I decided to
 25 purchase a Subaru Outback for the quality and reliability
 26 however after experiencing the poor windshield quality,
 27 I may not purchase another Subaru.

28 For a little background, I have had the same commute for
 over ten years. With other vehicles I have experienced
 rock chips, which I have been able to get repaired and
 never had to replace the windshield. I have driven lesser
 quality and less reliable vehicles and have never had to
 incur the out of pocket cost that I have with the Subaru
 Outback with 3 months of ownership.

To put this in perspective, the cost of one windshield
 replacement equals the cost of one month of daycare for
 a toddler, one year of auto and homeowner's insurance
 or two Epi Pens. This expense goes far beyond the
 annual routine maintenance I expect to pay on any
 vehicle.

c. Another consumer wrote on April 10, 2019:

¹⁹https://www.carcomplaints.com/Subaru/Outback/2019/windows_windshield/windshield_crack.shtml (last viewed November 13, 2019).

On Jan 20th 2019, purchased a brand new 2019 Subaru Outback 3.6R. The car is garaged inside everyday on 4/10/2019 I noticed a huge crack on front of my driver side windshield as I was getting into my car after work. I researched and on the Youtube I also see a video with exact crack that starts from the bottom of the windshield the person who posted the video had 2018 Outback. I've had Volvo, Honda and Acura MDX and never had I a window crack like this before even with little chip that would occur from driving highways or going off road on a ski trip.

d. Another consumer wrote on May 29, 2019:

2019 Subaru Outback purchased February 2019 with 7500 miles. Windshield crack developed on the passenger side edge, 1/2 up and grew toward the center. The vehicle has eyesight and that will need to be recalibrated after the replacement. One estimate is up to \$1500 including calibration. Subaru doesn't want to know anything. Funny how our 2005 Sienna has 263,000 miles and the original windshield.

126. In a forum for 2017 Subaru Foresters titled "Windshield Cracks"²⁰ on carcomplaints.com, a consumer wrote on March 5, 2018:

My windshield cracked with no apparent impact about 6 months ago. Then the other day, my husband noticed 4 new cracks appearing in my new windshield. He was upset because I had just been in a Fuller's Car Wash and he said those cloth car washes are too rough for this car. I knew there was no way that car's windshield was damaged in the car wash. We had to have the windshield replaced again! This car was purchased brand new, and this should not be happening. I just want a glass that won't crack.

127. In a forum for 2018 Subaru Foresters titled "Cracked Windshield"²¹ on carcomplaints.com, consumers posted as follows:

a. A consumer wrote on August 25, 2018:

A small stone cracked my windshield on 8/25/2018, and the crack continues to grow while not even driving the vehicle. I live in Massachusetts where it is illegal to drive a car with a cracked windshield. The glass company told

²⁰https://www.carcomplaints.com/Subaru/Forester/2017/windows_windshield/windshield_cracks.shtml (last viewed November 14, 2019).

²¹https://www.carcomplaints.com/Subaru/Forester/2018/windows_windshield/cracked_windshield.shtml (last viewed November 13, 2019).

me that the part is on backorder from Subaru (verified with a second glass company) and will not be available before the beginning of October. This means that I will not be able to operate my car for at least 5 weeks.

I have tried to get the dealer where I purchased the car to give me a loaner, but so far no luck. I talked to someone at Subaru Customer Service about this issue and am waiting to see for a response. I have also been in touch with the Massachusetts Attorney General's Office (They just talked about the lemon law here.) and a local TV station's consumer complaint division (They suggested writing to the head of Subaru USA -- I plan to do this next.)

There was a class action suit for windshield issues for earlier years Outbacks and Legacys,

b. Another consumer wrote on December 10, 2018:

Add my wife and I to the list of disgruntled Subaru owners. Our 2018 Outback suffered a spontaneous windshield crack, without impact to the glass, originating in the deicer area on the driver's side (like countless others reported online). At least three separate service bulletins have been issued related to this problem, and a class action lawsuit is underway in California. We purchased the extended bumper-to-bumper warranty, but after speaking with a service center rep who says she's aware of the issue but can't remember the dealership ever covering a warranty claim for windshield damage, I have little faith this will be resolved satisfactorily.

128. In a forum for 2017 Subaru Legacies titled "Cracked Windshield"²² on carcomplaints.com, consumers posted as follows:

a. A consumer wrote on March 30, 2018:

Few months after buying the vehicle, windshield cracks while driving on the highway. No apparent reason was heard or noticed. Insurance paid for the replacement minus the deductible.

b. Another consumer wrote on June 12, 2018:

New car purchased in May 2017 and first windshield crack happen in June 2017 at shopping parking lot parked car. After fixing it with the Subaru parts, same day evening at the office parking lot it cracked again at

²²https://www.carcomplaints.com/Subaru/Legacy/2017/windows_windshie ld/cracked_windshield.shtml (last viewed November 14, 2019).

1 the same spot. Non in June 2018 again another crack at
2 the same spot. It can not be coincident to happen at the
same spot for times.

3 129. In a forum titled “Windshield cracked, 3 day old 2017 Limited”²³ on
4 subaruoutback.org, a consumer with the username “davidaug” wrote regarding
5 his 2017 Outback on January 1, 2017:

6 Hi - new Subaru owner, bought the car last Saturday and
7 Wednesday there developed a crack starting at the
8 bottom of the center of the windshield, radiating upward.
9 Turned on defroster and watched the crack start going
laterally toward the driver side. There is a small chip
10 about 1" above the start of the crack, but I do not recall
11 hearing an impact. I previously drove a 1998 Mercedes
12 Wagon for 290000 miles with many stone impacts, etc,
but never any sort of crack resulted, the most damage
was a small chip. So, I guess this is my question - is the
2017 also affected by previous model years windshield
issues, or am I just the victim of bad luck (as the dealer
service manager says)?

13 130. A consumer with the username “jeffoutback” responded on this
14 thread on October 25, 2017:

15 Apparently we're in the same boat

16 2017 Subaru outback 15000 miles - long crack going up
17 from a "tiny" impact to windshield a few inches from the
18 bottom (below the horizon of the hood and below the
windshield wiper). Must be some pretty weak glass - had
19 a Toyota RAV 4 since 2008 and never had a crack.

20 131. In a forum titled “2017 xt windshield - I will be on my 4th soon”²⁴
21 on subaruforester.org, a consumer with the username “hoshie” with a 2018
22 Forester XT began the thread on December 24, 2017:

23 realize there have been a couple threads on this but it
24 needs another aha.

25 These are by far the worst windshields I have ever
26 experienced. Nothing comes close.

27 ²³ <https://www.subaruoutback.org/threads/windshield-cracked-3-day-old-2017-limited.398690/> (last viewed November 13, 2019).

28 ²⁴ <https://www.subaruforester.org/threads/2017-xt-windshield-i-will-be-on-my-4th-soon.743937/> (last viewed November 13, 2019).

1 They pit at negative temperatures from the tiniest rocks.
2 They crack soon after.

3 I will be on my 4th soon.

4 Considering the footprint, something needs to be
5 rectified.

6 Absolute design flaw. Garbage product.

7 132. A consumer with the username "Rick's17" with a 2017 Forester
8 Limited responded on this thread on December 24, 2017:

9 Maybe. I got a tiny chip near my windshield pillar and
10 with cold weather, crack is now halfway across
11 windshield

12 133. A consumer with the username "saab93ddriver" with a 2017
13 Forester XT responded on this thread on December 25, 2017:

14 I have to say the glass seems to be pretty tender. I'm on
15 my third windshield within a year. I'm in Florida, I'm not
16 sure temperature is a controlling factor. Last time I had
17 it replaced the glass was on national back order and I had
18 to wait 6 weeks, which says to me there is a pretty good
19 demand. Now I got a chip last week, it's not growing so
20 maybe this one can be repaired rather than replacing the
21 whole piece of glass. In my 35 years of driving, before
22 the Forester experience, I replaced 1 windshield in my
23 Honda Element and never had to have any repaired in
24 any of my other vehicles.

25 134. A consumer with the username "regajohn" with a 2014 Forester XT
26 CVT responded on this thread regarding his sister's 2017 Forester on December
27 25, 2017:

28 My sister's new (2017) is on its 3rd windshield in fewer
than 4,000 miles. The 2nd one broke while she was
leaving the dealership (the new glass didn't make it a
mile).

Both replacements have been paid for by the dealer /
SoA.

The glass is definitely thin / weak.

135. In a forum titled "2018 Subaru Forester Windshield crack (merged

1 thread)²⁵ on subaruforester.org, a consumer with the username “safebet” wrote
 2 on July 18, 2018:

3 My 3 week old 2018 XT windshield just broke this
 4 afternoon driving down the road with no cars nearby. No
 5 reason at all. A friend and I were returning from lunch
 6 and bang! A huge crack straight down from the drivers
 side and cutting over to the middle of vision. It was 78
 degrees outside and no reason whatsoever for this to
 happen. Not happy.

7
 8 136. A consumer with the username “cheeksfl6” responded on this
 9 thread on July 26, 2018:

10 We have had the same issue with our 2017 Forester
 11 Touring that we bought new in May 2017. In Jun 2018,
 12 we experienced the third windshield crack by a strike so
 13 small we didn't hear anything, just saw the crack as it
 14 appeared and spread about 12". I have read up on the
 15 failed Subaru windshield redesign of the Forester for
 16 2017, called an ‘Acoustic’ windshield, it was designed
 17 to cut down on cabin noise and also to reduce weight, but
 18 actually appears to increase the occurrence of cracks
 19 versus chips, because the windshields are made using
 20 two thin pieces of glass with a laminate in between. The
 21 thinner glass on the outside cracks rather than chips
 22 requiring replacement rather than repair. Subaru of
 23 America (SoA) will not acknowledge there is a problem
 24 and therefore, as far as I know, is not working to correct
 25 the (non) problem. I have owned 19 cars in over 50 years
 26 of driving; I have only replaced one windshield on a
 27 1997 Volvo because of an "excessive number of chip
 repairs" (not a crack) before buying this Forester. It has
 been a month since our windshield cracked and it is still
 not replaced. I tried to replace it on the trip on which it
 occurred, but an OEM windshield was not available
 (Subaru of America denies there was/is a shortage of
 windshields), but I verified the shortage in Richmond,
 VA with two sources. Once I returned home I took the
 car to the dealer where I bought it and petitioned to get
 SoA to replace the windshield but as others have noted
 on this thread, Subaru claims no responsibility if the
 crack was caused by “foreign debris” (rock) regardless
 of the fact that it is their failed design that leads to an
 abnormal rate of crack damage. An automaker that
 claims replacing a windshield every 8000 miles (in my
 case) is normal, is not an automaker to be trusted. In my
 opinion, Subaru should: 1) acknowledge there is a
 problem with their windshield design, 2) immediately
 attack this engineering issue with the objective of a

28 ²⁵ <https://www.subaruforester.org/threads/2018-subaru-forester-windshield-crack-merged-thread.780995/> (last viewed November 13, 2019).

1 'counter' redesign of the windshield to normalize its life
 2 warranty pending redesign, then once a solution is
 3 determined, 4) issue a recall of all affected vehicles to
 4 replace remaining faulty windshields. Unfortunately, I
 5 don't think we should hold our breath for Subaru to do
 6 the right thing and so I am adopting my own policy
 7 regarding this problem; that is, I won't replace a cracked
 8 windshield unless and until it becomes a distraction to
 9 my vision or EyeSight's function, extends from one edge
 10 to another, or a second crack occurs (which I know will
 11 happen). Additionally, beginning with my current
 12 replacement, I will replace with ASI aftermarket non
 13 'Acoustic' windshield. I will also continue to pass on my
 14 experience with Subaru to friends and family as I did on
 15 the trip that the current damage occurred. As a result, my
 16 son in VA is reconsidering his plan to purchase a new
 17 Crosstrek; a close friend in MA is reconsidering plan to
 18 trade in Volvo XC 90 on new Outback; my wife's
 19 childhood friend in NJ is reconsidering trading in 2012
 20 Outback on new one; and fellow church member here in
 21 GA is reconsidering buying a new Outback. If you have
 22 similar personal experiences that you wish you had prior
 23 to buying your Subaru, I encourage you to pass them on
 24 ... had I known of this problem ahead of time, I would
 25 not have bought the Forester, or any other Subaru.

137. In a forum titled "2019 - Windshield on LONG backorder!"²⁶ on
 138 subaruforester.org, a consumer with the username "hammerse" wrote on
 139 February 6, 2019:

140 cracked windshield

141 1st day my wife drove her '19 touring, she had a
 142 windshield crack from a little rock while on the
 143 interstate.

138. A consumer with the username "ctina8" responded on this thread on
 139 February 7, 2019:

140 Same here, first day out with my 18, ended up with a
 141 crack in windshield, does Subaru use some kind of cheap
 142 glass, ever little stone that hits windshield is making a
 143 chip. So annoyed!!

139. In a subforum for Subaru Outback owners on reddit.com, a

²⁶<https://www.subaruforester.org/threads/2019-windshield-on-long-backorder.794211/> (last viewed November 13, 2019).

1 consumer wrote on January 1, 2017:²⁷

2 2017 Outback's supercrackable windshield

3 My wife's 2017 Outback ran into one tiny gravel pellet
4 at 25miles/hr, and boom, we have a growing crack on the
5 windshield now. Googled up windshield replacement
6 and saw there was a Class action on this against Subaru.
7 Called up the dealer, he said they don't handle
8 windshield replacements and asked me to contact
9 Insurance. Called Subaru America, they registered my
10 complaint, and mentioned they don't cover stone hits,
11 and don't know about any faults with the current
12 windshields and asked me to contact the dealer. Its gonna
cost either myself/insurance&myself \$550 to get this
replaced (\$350 windshield + \$200 labor). On top of it,
the dealer gets to re calibrate the eyesight for another
\$250 For a car that is designed for offroad use, the size
of stone that cracked the windshield was something we
could have protected with our face without injury.
Wondering how many folks here has faced this problem
and what they have done about it?

13 140. In the reviews section for the 2019 Subaru Forester on cars.com,²⁸ a
14 consumer wrote on November 21, 2018:

15 I've only had mine for 2 1/2 weeks. After driving it for 1
16 week a small rock hit the windshield. I brought it to a
17 reputable glass shop to have it fixed and it spidered when
18 they attempted to fix it. I ordered a new windshield from
19 the dealership last week and it will be another 2 1/2
20 weeks to get here. Today another very tiny rock hit the
windshield and made a star chip that looks like it will
spider rapidly. It seems to me that it's a pretty weak
windshield and at a \$1,000.00 for a new one it's a
moneymaker for Subaru/dealership. My 2014 Forester
did not have this problem. I am not happy.

21 141. On the same cars.com page, another consumer wrote on March 12,
22 2019:

23 I've driven the 2019 Subaru Forester Touring model for
24 a month, about 2500 miles. I'll start with the good. The
25 seats are very comfortable and the entertainment system
26 is great. Mine came with a trial subscription to Sirius xm
radio and that has been enjoyable. The visibility is

27 ²⁷[https://www.reddit.com/r/subaruoutback/comments/7zavlo/2017_outbac
ks_supercrackable_windshield/](https://www.reddit.com/r/subaruoutback/comments/7zavlo/2017_outbacks_supercrackable_windshield/) (last visited November 14, 2019).

28 ²⁸²⁸[https://www.cars.com/research/subaru-forester-2019/consumer-
reviews/](https://www.cars.com/research/subaru-forester-2019/consumer-reviews/) (last viewed November 13, 2019)

amazing on the car; there are no blind spots. Plenty of storage and extremely roomy. If all you were going to do is sit in the car you would be happy. Now the cons. It is true that the cup holders are in a very weird and hard to reach place, almost behind you. I'm still not used to that. It's also true that there is only one small cubby in the front that doesn't really hold much. They put the usb outlet deep under there so it's hard to find. The windshield seems to break easily. I got one small rock chip and it put a crack through the entire windshield. I've never had a car that the window breaks in half over a tiny rock chip, and don't think that you're going to get a replacement easily. The replacement windshields are very expensive and there is a two month wait. . . .

142. On the same cars.com page, another consumer wrote on September 4, 2019:

We bought the 2019 Forested less than 2 months ago in mid July 2019 at 500 miles the windshield cracked from driver side to middle of the passenger side. When we took it into Hueberger a Subaru, Colorado Springs, amazingly the service manager's what he called a chip the size of the end of a ball point pen. It cracked over nite while in the garage. We are at a time there is not gravel on the road and we did not see or hear a rock. Then he said because of the eyesight cameras the glass is thinner than other windshields. Major design flaw in a vehicle built for snow and off road driving! The windshields are 1100.00 installed..so guess we'll have to drive my 2010 Jetta in the snow.. original windshield, or the 2005 Pontiac vibe, original windshield. We have a case # with Subaru and they may warranty one time. I am not happy and the thought that we already have this issue is concerning.

143. In the reviews section for the 2019 Subaru Outback on cars.com,²⁹ a consumer wrote on March 11, 2019:

Very happy with ride, safety features, fit, finish, quality. Gas mileage not great but good. Coincidentally bought it a day before a big snow hit Seattle and was glad to have the AWD. Adaptive cruise control wonderful once you get used to it. StarLink functionality and UI is confusing and frustrating; doubt we will extend the free trial subscription. A month after buying, found a crack that will require an expensive windshield replacement. It traces to a tiny chip, presumably from a small rock we didn't notice. Subaru user forums online discuss potentially vulnerable/weak windshields so prospective

²⁹²⁹ <https://www.cars.com/research/subaru-outback-2019/consumer-reviews/> (last viewed November 13, 2019)

1 buyers might want to have low deductible on your
2 comprehensive insurance.

3 144. Defendants had superior and exclusive knowledge of the Defect and
4 knew or should have known that the defect was not known or reasonably
5 discoverable by Plaintiffs and Class Members before they purchased or leased
6 the Class Vehicles.

7 145. Plaintiffs are informed and believes, and based thereon alleges, that
8 before Plaintiffs purchased their respective Class Vehicles Defendants knew
9 about the Defect through sources not available to consumers, including pre-
10 release testing data, early consumer complaints to Defendants and their dealers,
11 testing conducted in response to those consumer complaints, high cracking rates
12 of the windshield, the data demonstrating the inordinately high volume of
13 replacement part sales, and other aggregate data from Defendants' dealers about
14 the problem.

15 146. Defendants are experienced in the design and manufacture of
16 consumer vehicles. As an experienced manufacturer, Defendants conduct tests,
17 including pre-sale testing, on incoming components, including the windshield, to
18 verify the parts are free from defect and align with Defendants' specifications.
19 Thus, Defendants knew or should have known the windshield was defective and
20 prone to put drivers in a dangerous position due to the inherent risk of the
21 Defect.

22 147. Defendants should have learned of this widespread defect from the
23 sheer number of reports received from dealerships. Defendants' customer
24 relations department, which interacts with individual dealerships to identify
25 potential common defects, has undoubtedly received numerous reports regarding
26 the Defect. Defendants' customer relations department also collects and analyzes
27 field data including, but not limited to, repair requests made at dealerships,
28 technical reports prepared by engineers who have reviewed vehicles for which
warranty coverage is being requested, parts sales reports, and warranty claims

1 data.

2 148. Defendants' warranty department similarly analyzes and collects
3 data submitted by their dealerships to identify warranty trends in their vehicles.
4 It is Defendants' policy that when a repair is made under warranty the dealership
5 must provide Defendants with detailed documentation of the problem and a
6 complete disclosure of the repairs employed to correct it. Dealerships have an
7 incentive to provide detailed information to Defendant, because they will not be
8 reimbursed for any repairs unless the justification for reimbursement is
9 sufficiently detailed.

10 149. Defendant issued Technical Service Bulletin (TSB) Number 12-192-
11 15R on October 26, 2016, revised on November 19, 2016, that shows its
12 knowledge of the same Defect as it existed in prior model years for two of the
13 three Class Vehicles at issue here. This TSB states that:

14 Subaru of America, Inc. (SOA) Quality Assurance has identified an
15 increase in the number of cracked windshields on some 2015 and 2016MY
16 Legacy and Outback models. Further investigation has determined the root
17 cause for many of these failures to be the ceramic materials used for the
18 black-colored printed perimeter combined with the silver-colored material
19 used for the wiper deicer portion of the windshield glass. In response to this
20 increase, SOA is extending the original warranty on applicable factory-
21 installed windshields to 5 years / unlimited miles. This warranty extension
22 will cover windshield replacement a maximum of **ONE TIME** where
23 applicable on a vehicle with a VIN prior to those listed in the Production
24 Change Information on page 2 and meeting the guidelines outlined in this
25 bulletin.

26 150. The existence of the Defect is a material fact that a reasonable
27 consumer would consider when deciding whether to purchase or lease a Class
28 Vehicle. Had Plaintiffs and other Class Members known of the Defect, they

1 would have paid less for the Class Vehicles or would not have purchased or
2 leased them.

3 151. Reasonable consumers, like Plaintiffs, expect that a vehicle's
4 windshield will function in a manner that will not pose a safety risk and is free
5 from defects. Plaintiffs and Class Members further reasonably expect that
6 Defendants will not sell or lease vehicles with known safety defects, such as the
7 Defect, and will disclose any such defects to their consumers when it learns of
8 them. They did not expect Defendants to conceal and fail to disclose the Defect
9 to them, and to then continually deny its existence.

10 **Defendants Have Actively Concealed the Defect**

11 152. Despite their knowledge of the Defect in the Class Vehicles,
12 Defendants actively concealed the existence and nature of the defect from
13 Plaintiffs and Class Members. Specifically, Defendants failed to disclose or
14 actively concealed at and after the time of purchase, lease, or repair:

- 15 (a) any and all known material defects or material nonconformity
16 of the Class Vehicles, including the defects pertaining to the
17 windshield;
- 18 (b) that the Class Vehicles, including the windshields, were not in
19 good in working order, were defective, and were not fit for
20 their intended purposes; and
- 21 (c) that the Class Vehicles and the windshields were defective,
22 despite the fact that Defendants learned of such defects as
23 early as early 2018.

24 153. When consumers present their Class Vehicles to an authorized
25 Defendants' dealer for windshield repairs, rather than repair the problem under
26 warranty, Defendants' dealers either inform consumers that their vehicles are
27 functioning properly or conduct repairs that merely mask the Defect.

28 154. Defendants have caused Class Members to expend money at their

dealerships to replace the Class Vehicles' windshields and pay for related repairs, despite Defendants' knowledge of the Defect.

Defendants Have Unjustly Retained A Substantial Benefit

155. On information and belief, Plaintiffs alleges that Defendants unlawfully failed to disclose the alleged defect to induce them and other putative Class Members to purchase or lease the Class Vehicles.

156. Plaintiffs further alleges that Defendants thus engaged in deceptive acts or practices pertaining to all transactions involving the Class Vehicles, including Plaintiff's.

157. As discussed above therefore, Plaintiffs allege that Defendants unlawfully induced him to purchase his respective Class Vehicles by concealing a material fact (the Defect) and that he would have paid less for the Class Vehicles, or not purchased them at all, had he known of the defect.

158. Accordingly, Defendants' ill-gotten gains, benefits accrued in the form of increased sales and profits resulting from the material omissions that did - and likely will continue to - deceive consumers, should be disgorged.

CLASS ACTION ALLEGATIONS

159. Plaintiffs bring this lawsuit as a class action on behalf of themselves and all others similarly situated as members of the proposed Class pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

160. The Class and Sub-Class are defined as:

Class: All individuals in the United States who purchased or leased any Class Vehicle.

California Sub-Class: All members of the Class who purchased or leased their Class Vehicle in the State of California.

CLRA Sub-Class: All members of the California Sub-Class who are "consumers" within the meaning of California Civil Code § 1761(d).

1 **Implied Warranty Sub-Class:** All members of the
 2 Class who took delivery of their vehicles in the State of
 California.

3 161. **Colorado Sub-Class:** All members of the Class who purchased or
 4 leased their Class Vehicle in the State of Colorado.Excluded from the Class and
 5 Sub-Classes are: (1) Defendant, any entity or division in which Defendants have
 6 a controlling interest, and their legal representatives, officers, directors, assigns,
 7 and successors; (2) the Judge to whom this case is assigned and the Judge’s staff;
 8 (3) any Judge sitting in the presiding state and/or federal court system who may
 9 hear an appeal of any judgment entered; and (4) those persons who have suffered
 10 personal injuries as a result of the facts alleged herein. Plaintiffs reserves the
 11 right to amend the Class and Sub-Class definitions if discovery and further
 12 investigation reveal that the Class and Sub-Class should be expanded or
 13 otherwise modified.

14 162. Numerosity: Although the exact number of Class Members is
 15 uncertain, and can only be ascertained through appropriate discovery, the number
 16 is significant enough such that joinder is impracticable. The disposition of the
 17 claims of these Class Members in a single action will provide substantial benefits
 18 to all parties and to the Court. The Class Members are readily identifiable from
 19 information and records in Defendants’ possession, custody, or control, as well
 20 as from records kept by the Department of Motor Vehicles.

21 163. Typicality: Plaintiffs’ claims are typical of the claims of the Class
 22 in that Plaintiffs, like all Class Members, purchased or leased a Class Vehicle
 23 designed, manufactured, and distributed by Defendants. The representative
 24 Plaintiffs, like all Class Members, has been damaged by Defendants’ misconduct
 25 in that he has incurred or will incur the cost of repairing or replacing the
 26 defective windshield. Furthermore, the factual bases of Defendants’ misconduct
 27 are common to all Class Members and represent a common thread resulting in
 28 injury to the Class.

1 164. Commonality: There are numerous questions of law and fact
2 common to Plaintiffs and the Class that predominate over any question affecting
3 Class Members individually. These common legal and factual issues include the
4 following:

- 5 (a) Whether Class Vehicles suffer from defects relating to the
6 windshield;
- 7 (b) Whether the defects relating to the windshield constitute an
8 unreasonable safety risk;
- 9 (c) Whether Defendants knew about the defects pertaining to the
10 windshield and, if so, how long Defendants have known of
11 the defect;
- 12 (d) Whether the defective nature of the windshield constitutes a
13 material fact;
- 14 (e) Whether Defendants have had an ongoing duty to disclose the
15 defective nature of the windshield to Plaintiffs and Class
16 Members;
- 17 (f) Whether Plaintiffs and the other Class Members are entitled
18 to equitable relief, including a preliminary and/or a permanent
19 injunction;
- 20 (g) Whether Defendants knew or reasonably should have known
21 of the defects pertaining to the windshield before it sold and
22 leased Class Vehicles to Class Members;
- 23 (h) Whether Defendants should be declared financially
24 responsible for notifying the Class Members of problems with
25 the Class Vehicles and for the costs and expenses of repairing
26 and replacing the defective windshields;
- 27 (i) Whether Defendants are obligated to inform Class Members
28 of their right to seek reimbursement for having paid to

1 diagnose, repair, or replace their defective windshields;

2 (j) Whether Defendants breached the implied warranty of
3 merchantability pursuant to the Magnuson-Moss Warranty
4 Act;

5 (k) Whether Defendants breached the implied warranty of
6 merchantability pursuant to the Song-Beverly Act

7 (l) Whether Defendants breached their express warranties under
8 UCC section 2301; and

9 (m) Whether Defendants breached written warranties pursuant to
10 the Magnuson-Moss Warranty Act.

11 165. Adequate Representation: Plaintiffs will fairly and adequately
12 protect the interests of the Class Members. Plaintiffs have retained attorneys
13 experienced in the prosecution of class actions, including consumer and product
14 defect class actions, and Plaintiffs intend to vigorously prosecute this action.

15 166. Predominance and Superiority: Plaintiffs and Class Members have
16 all suffered, and will continue to suffer, harm and damages as a result of
17 Defendants' unlawful and wrongful conduct. A class action is superior to other
18 available methods for the fair and efficient adjudication of the controversy.

19 Absent a class action, most Class Members would likely find the cost of
20 litigating their claims prohibitively high and would therefore have no effective
21 remedy. Because of the relatively small size of the individual Class Members'
22 claims, it is likely that only a few Class Members could afford to seek legal
23 redress for Defendants' misconduct. Absent a class action, Class Members will
24 continue to incur damages, and Defendants' misconduct will continue unabated
25 without remedy or relief. Class treatment of common questions of law and fact
26 would also be a superior method to multiple individual actions or piecemeal
27 litigation in that it will conserve the resources of the courts and the litigants and
28 promote consistency and efficiency of adjudication.

FIRST CAUSE OF ACTION
(Violation of California’s Consumers Legal Remedies Act,
California Civil Code § 1750, *et seq.*)
(On Behalf of the CLRA Sub-Class)

167. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

168. Plaintiffs bring this cause of action on behalf of themselves and the CLRA Sub-Class (CLRA Sub-Class).

169. Each Defendant is a “person” as defined by California Civil Code § 1761(c).

170. Plaintiffs and the CLRA Sub-Class members are “consumers” within the meaning of California Civil Code § 1761(d) because they purchased their Class Vehicles primarily for personal, family, or household use.

171. By failing to disclose and concealing the defective nature of the windshield from Plaintiffs and prospective CLRA Sub-Class members, Defendants violated California Civil Code § 1770(a), as it represented that the Class Vehicles and their windshields had characteristics and benefits that they do not have, and represented that the Class Vehicles and their windshields were of a particular standard, quality, or grade when they were of another. See Cal. Civ. Code §§ 1770(a)(5) & (7).

172. Defendants’ unfair and deceptive acts or practices occurred repeatedly in Defendants’ trade or business, were capable of deceiving a substantial portion of the purchasing public, and imposed a serious safety risk on the public.

173. Defendants knew that the Class Vehicles and their windshields suffered from an inherent defect, were defectively designed, and were not suitable for their intended use.

174. As a result of their reliance on Defendants’ omissions, owners

1 and/or lessees of the Class Vehicles, including Plaintiffs, suffered an
2 ascertainable loss of money, property, and/or value of their Class Vehicles.
3 Additionally, as a result of the Defect, Plaintiffs and the CLRA Sub-Class
4 members were harmed and suffered actual damages in that the Class Vehicles'
5 windshields are substantially certain to crack or break before their expected
6 useful life has run.

7 175. Defendants were under a duty to Plaintiffs and the CLRA Sub-
8 Class members to disclose the defective nature of the windshields and/or the
9 associated repair costs because:

- 10 (a) Defendants were in a superior position to know the true state
11 of facts about the safety defect in the Class Vehicles'
12 windshields;
- 13 (b) Plaintiffs and the CLRA Sub-Class members could not
14 reasonably have been expected to learn or discover that their
15 windshields had a dangerous safety defect until it manifested;
16 and
- 17 (c) Defendants knew that Plaintiffs and the CLRA Sub-Class
18 members could not reasonably have been expected to learn of
19 or discover the safety defect.

20 176. In failing to disclose the defective nature of windshields, Defendants
21 knowingly and intentionally concealed material facts and breached their duty not
22 to do so.

23 177. The facts Defendants concealed from or failed to disclose to
24 Plaintiffs and the CLRA Sub-Class members are material in that a reasonable
25 consumer would have considered them to be important in deciding whether to
26 purchase or lease the Class Vehicles or pay less. Had Plaintiffs and the CLRA
27 Sub-Class members known that the Class Vehicles' windshields were defective,
28 they would not have purchased or leased the Class Vehicles or would have paid

1 less for them.

2 178. Plaintiffs and the CLRA Sub-Class members are reasonable
3 consumers who do not expect the windshields installed in their vehicles to
4 exhibit problems such as the Defect. This is the reasonable and objective
5 consumer expectation relating to a vehicle's windshield.

6 179. As a result of Defendants' conduct, Plaintiffs and the CLRA Sub-
7 Class members were harmed and suffered actual damages in that, on information
8 and belief, the Class Vehicles experienced and will continue to experience
9 problems such as the Defect.

10 180. As a direct and proximate result of Defendants' unfair or deceptive
11 acts or practices, Plaintiffs and the CLRA Sub-Class members suffered and will
12 continue to suffer actual damages.

13 181. Plaintiffs and the CLRA Sub-Class members are entitled to
14 equitable relief.

15 182. Plaintiff provided Defendant with notice of its violations of the
16 CLRA pursuant to California Civil Code § 1782(a). If, within 30 days,
17 Defendant fails to provide appropriate relief for their violations of the CLRA,
18 Plaintiff Patrick will amend this Complaint to seek monetary, compensatory, and
19 punitive damages, in addition to the injunctive and equitable relief that he seeks
20 now on behalf of himself and the CLRA Sub-Class.

21 **SECOND CAUSE OF ACTION**

22 **(Violation of California Business & Professions Code § 17200, *et seq.*)**

23 **(On Behalf of the California Sub-Class)**

24 183. Plaintiffs incorporates by reference the allegations contained in
25 paragraphs 1 to 167 of this Complaint.

26 184. Plaintiffs brings this cause of action on behalf of himself and the
27 California Sub-Class (CA Sub-Class).

28 185. As a result of their reliance on Defendants' omissions, owners

1 and/or lessees of the Class Vehicles, including Plaintiffs, suffered an
2 ascertainable loss of money, property, and/or value of their Class Vehicles.
3 Additionally, as a result of the Defect, Plaintiffs and the CA Sub-Class members
4 were harmed and suffered actual damages in that the Class Vehicles' windshields
5 are substantially certain to fail before their expected useful life has run.

6 186. California Business & Professions Code § 17200 prohibits acts of
7 "unfair competition," including any "unlawful, unfair or fraudulent business act
8 or practice" and "unfair, deceptive, untrue or misleading advertising."

9 187. Plaintiffs and the CA Sub-Class members are reasonable consumers
10 who do not expect their windshields to exhibit problems such as spontaneously
11 and/or unreasonably cracking, chipping and otherwise breaking, and frequent
12 replacement.

13 188. Defendants knew the Class Vehicles and their windshields were
14 defectively designed or manufactured, would fail prematurely, and were not
15 suitable for their intended use.

16 189. In failing to disclose the Defect, Defendants have knowingly and
17 intentionally concealed material facts and breached their duty not to do so.

18 190. Defendants were under a duty to Plaintiffs and the CA Sub-Class
19 members to disclose the defective nature of the Class Vehicles and their
20 windshields because:

21 (a) Defendants were in a superior position to know the true state
22 of facts about the safety defect in the Class Vehicles'
23 windshields; and

24 (b) Defendants actively concealed the defective nature of the
25 Class Vehicles and their windshields from Plaintiffs and the
26 CA Sub-Class.

27 191. The facts Defendants concealed from or failed to disclose to
28 Plaintiffs and the CA Sub-Class members are material in that a reasonable

1 person would have considered them to be important in deciding whether to
2 purchase or lease Class Vehicles. Had they known of the Defect, Plaintiffs and
3 the other CA Sub-Class members would have paid less for Class Vehicles
4 equipped with the windshields or would not have purchased or leased them at all.

5 192. Defendants continued to conceal the defective nature of the Class
6 Vehicles and their windshields even after Plaintiffs and the other CA Sub-Class
7 members began to report problems.

8 193. Defendants' conduct was and is likely to deceive consumers.

9 194. Defendants' acts, conduct, and practices were unlawful, in that they
10 constituted:

- 11 (a) Violations of California's Consumers Legal Remedies Act;
- 12 (b) Violations of the Song-Beverly Consumer Warranty Act;
- 13 (c) Violations of the Magnuson-Moss Warranty Act; and
- 14 (d) Breach of Express Warranty under California Commercial
15 Code § 2313.

16 195. By their conduct, Defendants have engaged in unfair competition
17 and unlawful, unfair, and fraudulent business practices.

18 196. Defendants' unfair or deceptive acts or practices occurred
19 repeatedly in Defendants' trade or business and were capable of deceiving a
20 substantial portion of the purchasing public.

21 197. As a direct and proximate result of Defendants' unfair and deceptive
22 practices, Plaintiffs and the other CA Sub-Class members have suffered and will
23 continue to suffer actual damages.

24 198. Defendants have been unjustly enriched and should be required to
25 make restitution to Plaintiffs and the other CA Sub-Class members pursuant to
26 §§ 17203 and 17204 of the Business & Professions Code.

THIRD CAUSE OF ACTION

(Breach of Implied Warranty Pursuant to Song-Beverly

Consumer Warranty Act, California Civil Code §§ 1792 and 1791.1, *et seq.*)

(On Behalf of the Implied Warranty Sub-Class)

199. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 to 167 of this Complaint.

200. Plaintiffs bring this cause of action against Defendants on behalf of himself and the Implied Warranty Sub-Class (IW Sub-Class).

201. Defendants were at all relevant times the manufacturer, distributor, warrantor, and/or seller of the Class Vehicles. Defendants knew or had reason to know of the specific use for which the Class Vehicles were purchased or leased.

202. Defendants provided Plaintiffs and the IW Sub-Class members with an implied warranty that the Class Vehicles and their components and parts are merchantable and fit for the ordinary purposes for which they were sold. However, the Class Vehicles are not fit for their ordinary purpose of providing reasonably reliable and safe transportation because, inter alia, the Class Vehicles and their windshields suffered from an inherent defect at the time of sale and thereafter and are not fit for their particular purpose of providing safe and reliable transportation.

203. Defendants impliedly warranted that the Class Vehicles were of merchantable quality and fit for their intended use. This implied warranty included, among other things: (i) a warranty that the Class Vehicles and their windshields, which were manufactured, supplied, distributed, and/or sold by Defendants, would provide safe and reliable transportation; and (ii) a warranty that the Class Vehicles and their windshields would be fit for their intended use.

204. Contrary to the applicable implied warranties, the Class Vehicles and their windshields at the time of sale and thereafter were not fit for their ordinary and intended purpose of providing Plaintiffs and the IW Sub-Class

1 members with reliable, durable, and safe transportation. Instead, the Class
2 Vehicles are defective, including the defective windshields.

3 205. The alleged Defect is inherent and was present in each Class
4 Vehicle at the time of sale.

5 206. As a result of Defendants' breach of the applicable implied
6 warranties, owners and/or lessees of the Class Vehicles suffered an ascertainable
7 loss of money, property, and/or value of their Class Vehicles. Additionally, as a
8 result of the Defect, Plaintiffs and the IW Sub-Class members were harmed and
9 suffered actual damages in that the Class Vehicles' windshields are substantially
10 certain to fail before their expected useful life has run.

11 207. Defendants' actions, as complained of herein, breached the implied
12 warranty that the Class Vehicles were of merchantable quality and fit for such
13 use in violation of California Civil Code §§ 1792 and 1791.1.

14 **FOURTH CAUSE OF ACTION**
15 **(Violation of the Colorado Consumer Protection Act,**
16 **Colo. Rev. Stat. §§ 6-1-101 *et seq.*)**
17 **(On Behalf of the Colorado Sub-Class)**

18 208. Plaintiffs incorporate by reference and re-allege the allegations
19 contained in paragraphs 1-167 of this Complaint.

20 209. Plaintiff Stephen Moreno ("Colorado Plaintiff") brings this cause of
21 action on his own behalf and on behalf of the members of the Colorado Sub-
22 Class.

23 210. Subaru is a "person" within the meaning of the Colorado Consumer
24 Protection Act ("CCPA"), COLO. REV. STAT. § 6-1-102.

25 211. The CCPA prohibits a person from engaging in a "deceptive trade
26 practice," including "knowingly mak[ing] a false representation as to the
27 characteristics, ingredients, uses, benefits, alterations, or quantities of goods
28 [...];" "represent[ing] that goods, good, services, or property are of a particular

1 standard, quality, or grade, [...] if he knows or should know that they are of
2 another;” and “advertis[ing] goods, services, or property with intent not to sell
3 them as advertised.” COLO. REV. STAT. § 6-1-105(1)(e), (g), and (i).

4 212. Subaru participated in deceptive trade practices that violated the
5 CCPA as described below and alleged throughout the Complaint. By failing to
6 disclose the Defect, by concealing the Defect, by marketing its vehicles as safe,
7 reliable, easily operable, efficient, and of high quality, and by presenting itself as
8 a reputable manufacturer that valued safety, cleanliness, performance and
9 efficiency, and stood behind its vehicles after they were sold, Subaru knowingly
10 and intentionally misrepresented and omitted material facts in connection with
11 the sale or lease of the Class Vehicles. Subaru systematically misrepresented,
12 concealed, suppressed, or omitted material facts relating to the Class Vehicles
13 and the Defect in the course of its business.

14 213. Subaru also engaged in unlawful trade practices by employing
15 deception, deceptive acts or practices, fraud, misrepresentations, or concealment,
16 suppression or omission of any material fact with intent that others rely upon
17 such concealment, suppression or omission, in connection with the sale of the
18 Class Vehicles.

19 214. Subaru’s unfair and deceptive acts or practices occurred repeatedly
20 in Subaru’s trade or business, were capable of deceiving a substantial portion of
21 the purchasing public, and imposed a serious safety risk on the public.

22 215. Subaru knew that the Class Vehicles and their transmissions
23 suffered from an inherent defect, were defectively designed or manufactured, and
24 were not suitable for their intended use.

25 216. Subaru knew or should have known that its conduct violated the
26 CCPA.

27 217. Colorado Plaintiff and the Colorado Sub-Class Members reasonably
28 relied on Subaru’s misrepresentations and omissions of material facts in its

1 advertisements of the Class Vehicles and in the purchase of the Class Vehicles.

2 218. Had Colorado Plaintiff and the Colorado Sub-Class Members
3 known that the Class Vehicles would exhibit the Defect, they would not have
4 purchased or leased the Class Vehicles, or would have paid less for them.
5 Plaintiffs did not receive the benefit of their bargain as a result of Subaru's
6 misconduct.

7 219. Colorado Plaintiff and the Colorado Sub-Class Members suffered
8 injury in fact to a legally protected interest. As a result of Subaru's conduct,
9 Colorado Plaintiff and the Colorado Sub-Class Members were harmed and
10 suffered actual damages in the form of the diminished value of their vehicles.

11 220. As a result of Subaru's conduct, Colorado Plaintiff and the Colorado
12 Sub-Class Members were harmed and suffered actual damages as a result of
13 Subaru's misrepresentations and omissions with regard to their Class Vehicles
14 windshields because they purchased vehicles which do not perform as
15 advertised.

16 221. As a direct and proximate result of Subaru's unfair or deceptive acts
17 or practices, Colorado Plaintiff and the Colorado Sub-Class Members suffered
18 and will continue to suffer injury in fact and/or actual damages.

19 222. Colorado Plaintiff and the Colorado Sub-Class Members seek
20 damages in an amount to be proven at trial, including but not limited to actual
21 damages, under the CCPA.

22 **FIFTH CAUSE OF ACTION**

23 **(Breach of Implied Warranty of Merchantability, Colo. Rev. Stat. §§ 4-2-**
24 **313 AND 4-2.5-212)**

25 **(On Behalf of the Colorado Sub-Class)**

26 223. Plaintiffs incorporate by reference and re-allege the allegations
27 contained in paragraphs 1-167 of this Complaint.

28 224. Colorado Plaintiff brings this cause of action on his own behalf and

1 on behalf of the members of the Colorado Sub-Class.

2 225. Subaru is and was at all relevant times a “merchant” with respect to
3 motor vehicles under COLO. REV. STAT. §§ 4-2-104(1) and 4-2.5-103(3), and
4 a “seller” of motor vehicles under § 4-2-103(1)(d).

5 226. With respect to leases, Subaru is and was at all relevant times a
6 “lessor” of motor vehicles under COLO. REV. STAT. § 4-2.5-103(1)(p).

7 227. The Class Vehicles are and were at all relevant times “goods” within
8 the meaning of COLO. REV. STAT. §§ 4-2-105(1) and 4-2.5-103(1)(h).

9 228. A warranty that the Class Vehicles were in merchantable condition
10 and fit for the ordinary purpose for which vehicles are used is implied by law
11 under COLO. REV. STAT. §§ 4-2-313 and 4-2.5-212.

12 229. Subaru knew or had reason to know of the specific use for which the
13 Class Vehicles were purchased or leased. Subaru directly sold and marketed
14 Class Vehicles to customers through authorized dealers, like those from whom
15 Colorado Plaintiff and the Colorado Sub-Class Members bought or leased their
16 vehicles, for the intended purpose of consumers purchasing the vehicles. Subaru
17 knew that the Class Vehicles would and did pass unchanged from the authorized
18 dealers to Colorado Plaintiff and the Colorado Sub-Class Members, with no
19 modification to the defective transmissions.

20 230. Subaru provided Plaintiffs and Class Members with an implied
21 warranty that the Class Vehicles and their components and parts are
22 merchantable and fit for the ordinary purposes for which they were sold.

23 231. This implied warranty included, among other things: (i) a warranty
24 that the Class Vehicles and their transmissions that were manufactured, supplied,
25 distributed, and/or sold by Subaru were safe and reliable for providing
26 transportation; and (ii) a warranty that the Class Vehicles and their transmissions
27 would be fit for their intended use while the Class Vehicles were being operated.

28 232. Contrary to the applicable implied warranties, the Class Vehicles

1 and their transmissions at the time of sale and thereafter were not fit for their
2 ordinary and intended purpose of providing Plaintiffs and Class Members with
3 reliable, durable, and safe transportation. Instead, the Class Vehicles are
4 defective, including, but not limited to, the defective design and/or manufacture
5 of their windshields and the existence of the Defect at the time of sale or lease
6 and thereafter. Subaru knew of this defect at the time these sale or lease
7 transactions occurred.

8 233. As a result of Subaru's breach of the applicable implied warranties,
9 Colorado Plaintiff and the Colorado Sub-Class Members of the Class Vehicles
10 suffered an ascertainable loss of money, property, and/or value of their Class
11 Vehicles. Additionally, as a result of the Defect, Colorado Plaintiff and the
12 Colorado Sub-Class Members were harmed and suffered actual damages in that
13 the Class Vehicles' windshields are substantially certain to crack or otherwise
14 fail before their expected useful life has run.

15 234. Subaru's actions, as complained of herein, breached the implied
16 warranty that the Class Vehicles were of merchantable quality and fit for such
17 use in violation of COLO. REV. STAT. §§ 4-2-313 and 4-2.5-212.

18 235. Colorado Plaintiff and the Colorado Sub-Class Members have
19 complied with all obligations under the warranty, or otherwise have been
20 excused from performance of said obligations as a result of Subaru's conduct
21 described herein.

22 236. Colorado Plaintiff and the Colorado Sub-Class Members were not
23 required to notify Subaru of the breach because affording Subaru a reasonable
24 opportunity to cure its breach of written warranty would have been futile. Subaru
25 was also on notice of the Defect from the complaints and service requests it
26 received from Plaintiffs and the Colorado Sub-Class Class Members, from
27 repairs and/or replacements of the transmissions or components thereof, and
28 through other internal sources.

237. As a direct and proximate cause of Subaru's breach, Colorado Plaintiff and the Colorado Sub-Class Members suffered damages and continue to suffer damages, including economic damages at the point of sale or lease and diminution of value of their Class Vehicles. Additionally, Colorado Plaintiff and the Colorado Sub-Class Members have incurred or will incur economic damages at the point of repair in the form of the cost of repair.

238. As a direct and proximate result of Subaru's breach of the implied warranty of merchantability, Colorado Plaintiff and the Colorado Sub-Class Members have been damaged in an amount to be proven at trial.

SIXTH CAUSE OF ACTION

(Breach of Warranty under the Magnuson-Moss Warranty Act,

15 U.S.C. § 2303 *et seq.*)

(On Behalf of the Class)

239. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 to 167 of this Complaint.

240. Plaintiffs bring this cause of action on behalf of themselves and on behalf of the Class against Defendants.

241. Defendants provided all purchasers and lessees of the Class Vehicles with an express warranty described *infra*, which became a material part of the bargain. Accordingly, Defendants' express warranty is an express warranty under California law.

242. The windshields were manufactured and/or installed in the Class Vehicles by Defendants and are covered by the express warranty.

243. In a section entitled "What Is Covered," Defendants' express warranty provides in relevant part that "These warranties cover any repairs needed to correct defects in material or workmanship reported during the applicable warranty period and which occur under normal use: . . . in any part of the 2017 model year Subaru which is identified on the inside front cover of this

1 Warranty & Maintenance Booklet(the "vehicle").”

2 244. According to Defendants, “BASIC COVERAGE is 3 years or
3 36,000 miles, whichever comes first.”

4 245. Defendants breached the express warranties by selling and leasing
5 Class Vehicles with windshields that were defective, requiring repair or
6 replacement within the warranty period, and refusing to honor the express
7 warranty by repairing or replacing, free of charge, the windshields, and instead,
8 replacing the defective windshields with equally defective windshields. By
9 simply replacing Plaintiffs’ and Class Members’ defective windshields with
10 similarly defective windshields, Defendants have failed to “repair” the defects as
11 alleged herein.

12 246. Plaintiffs were not required to notify Defendants of the breach or
13 was not required to do so because affording Defendants a reasonable opportunity
14 to cure their breach of written warranty would have been futile. Defendants were
15 also on notice of the defect from complaints and service requests it received from
16 Class Members, from repairs and/or replacements of the windshield, and from
17 other internal sources.

18 247. As a direct and proximate cause of Defendants’ breach, Plaintiffs
19 and the other Class members have suffered, and continue to suffer, damages,
20 including economic damages at the point of sale or lease. Additionally, Plaintiffs
21 and the other Class members have incurred or will incur economic damages at
22 the point of repair in the form of the cost of repair.

23 248. Plaintiffs and the other Class members are entitled to legal and
24 equitable relief against Defendant, including actual damages, consequential
25 damages, specific performance, attorneys’ fees, costs of suit, and other relief as
26 appropriate.

27
28

SEVENTH CAUSE OF ACTION

(Breach of Implied Warranty under the Magnuson-Moss Warranty Act,

15 U.S.C. § 2303 *et seq.*)

(On Behalf of the Class)

249. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 to 167 of this Complaint.

250. Plaintiffs bring this cause of action on behalf of themselves and the Class against Defendant.

251. The Class Vehicles are a “consumer product” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

252. Plaintiffs and Class Members are “consumers” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

253. Each Defendant is a “supplier” and “warrantor” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

254. Defendants impliedly warranted that the Class Vehicles were of merchantable quality and fit for use. This implied warranty included, among other things: (i) a warranty that the Class Vehicles and their windshields were manufactured, supplied, distributed, and/or sold by Defendants would provide safe and reliable transportation; and (ii) a warranty that the Class Vehicles and their windshields would be fit for their intended use while the Class Vehicles were being operated.

255. Contrary to the applicable implied warranties, the Class Vehicles and their windshields at the time of sale and thereafter were not fit for their ordinary and intended purpose of providing Plaintiffs and Class members with reliable, durable, and safe transportation. Instead, the Class Vehicles are defective, including the defective design of their windshields.

256. Defendants’ breach of implied warranties has deprived Plaintiffs and Class members of the benefit of their bargain.

1 257. The amount in controversy of Plaintiffs' individual claims meets or
2 exceeds the sum or value of \$25,000. In addition, the amount in controversy
3 meets or exceeds the sum or value of \$50,000 (exclusive of interests and costs)
4 computed on the basis of all claims to be determined in this suit.

5 258. Defendants have been afforded a reasonable opportunity to cure
6 their breach, including when Plaintiffs and Class members brought their vehicles
7 in for diagnoses and repair of the windshields.

8 259. As a direct and proximate cause of Defendants' breach of implied
9 warranties, Plaintiffs and Class members sustained and incurred damages and
10 other losses in an amount to be determined at trial. Defendants' conduct
11 damaged Plaintiffs and Class members, who are entitled to recover actual
12 damages, consequential damages, specific performance, diminution in value,
13 costs, attorneys' fees, and/or other relief as appropriate.

14 260. As a result of Defendants' violations of the Magnuson-Moss
15 Warranty Act as alleged herein, Plaintiffs and Class members have incurred
16 damages.

17 **EIGHTH CAUSE OF ACTION**

18 **(For Unjust Enrichment)**

19 **(On Behalf of the Class)**

20 261. Plaintiffs incorporate by reference the allegations contained in
21 paragraphs 1 to 167 of this Complaint.

22 262. Plaintiffs bring this cause of action on behalf of himself and the
23 Class.

24 263. As a direct and proximate result of Defendants' failure to disclose
25 known defects, Defendants have profited through the sale and lease of the Class
26 Vehicles. Although these vehicles are purchased through Defendants' agents,
27 the money from the vehicle sales flows directly back to Defendant.

28 264. Additionally, as a direct and proximate result of Defendants' failure

1 to disclose known defects in the Class Vehicles, Plaintiffs and Class Members
2 have vehicles that require repeated, high-cost repairs that can and therefore have
3 conferred an unjust substantial benefit upon Defendant.

4 265. Defendants have been unjustly enriched due to the known defects in
5 the Class Vehicles through the use money paid that earned interest or otherwise
6 added to Defendants' profits when said money should have remained with
7 Plaintiffs and Class Members.

8 266. As a result of the Defendants' unjust enrichment, Plaintiffs and
9 Class Members have suffered damages.

10 **RELIEF REQUESTED**

11 267. Plaintiffs, on behalf of themselves and all others similarly situated,
12 request the Court to enter judgment against Defendant, as follows:

- 13 (a) An order certifying the proposed Class and Sub-Classes,
14 designating Plaintiffs as named representatives of the Class,
15 and designating the undersigned as Class Counsel;
- 16 (a) A declaration that Defendants are financially responsible for
17 notifying all Class Members about the defective nature of the
18 windshields, including the need for periodic maintenance;
- 19 (b) An order enjoining Defendant from further deceptive
20 distribution, sales, and lease practices with respect to Class
21 Vehicles; compelling Defendant to issue a voluntary recall for
22 the Class Vehicles pursuant to. 49 U.S.C. § 30118(a);
23 compelling Defendant to remove, repair, and/or replace the
24 Class Vehicles' defective windshields with suitable
25 alternative product(s) that do not contain the defects alleged
26 herein; enjoining Defendant from selling the Class Vehicles
27 with the misleading information; and/or compelling
28 Defendant to reform their warranty, in a manner deemed to be

1 appropriate by the Court, to cover the injury alleged and to
2 notify all Class Members that such warranty has been
3 reformed;

4 (c) A declaration requiring Defendant to comply with the various
5 provisions of the Song-Beverly Act alleged herein and to
6 make all the required disclosures;

7 (d) An award to Plaintiffs and the Class for compensatory,
8 exemplary, and statutory damages, including interest, in an
9 amount to be proven at trial; except that Plaintiffs do not
10 currently seek monetary damages under the Consumers Legal
11 Remedies Act;

12 (e) Any and all remedies provided pursuant to the Song-Beverly
13 Act, including California Civil Code section 1794;

14 (f) Any and all remedies provided pursuant to the Magnuson-
15 Moss Warranty Act;

16 (g) A declaration that Defendant must disgorge, for the benefit of
17 the Class, all or part of the ill-gotten profits it received from
18 the sale or lease of the Class Vehicles or make full restitution
19 to Plaintiffs and Class Members;

20 (h) An award of attorneys' fees and costs, as allowed by law;

21 (i) An award of attorneys' fees and costs pursuant to California
22 Code of Civil Procedure § 1021.5;

23 (j) An award of pre-judgment and post-judgment interest, as
24 provided by law;

25 (k) Leave to amend the Complaint to conform to the evidence
26 produced at trial; and

27 (l) Such other relief as may be appropriate under the
28 circumstances.

DEMAND FOR JURY TRIAL

268. Pursuant to Federal Rule of Civil Procedure 38(b) and Central District of California Local Rule 38-1, Plaintiffs demands a trial by jury of all issues in this action so triable.

Dated: December 5, 2019

Respectfully submitted,

Capstone Law APC

By: /s/ Steven Weinmann

Steven Weinmann
Tarek H. Zohdy
Cody R. Padgett
Trisha K. Monesi

/s/ Russell D. Paul

Russell D. Paul
Amey J. Park
BERGER MONTAGUE PC

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EXHIBIT 1

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13 Attorneys for Plaintiffs

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16

17 GORDON ARMSTRONG,
18 ANDREW VIERRA, SANDY
MORENO and STEPHEN
19 MERMAN, individually, and on
behalf of a class of similarly situated
20 individuals,

21 Plaintiffs,

22 v.

23 SUBARU OF AMERICA, INC. and
FUJI HEAVY INDUSTRIES, LTD.,

24 Defendants.
25
26
27
28

Case No.:

**DECLARATION OF GORDON
ARMSTRONG IN SUPPORT OF
VENUE FOR CLASS ACTION
COMPLAINT PURSUANT TO
CIVIL CODE § 1780(d)**

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1. I make this declaration based upon my personal knowledge except as to those matters stated herein that are based upon information and belief, and as to those matters, I believe them to be true. I am over the age of eighteen, a citizen of the State of California, and a Plaintiff in this action.

3. I reside in Santa Clarita, California, which is in the County of Los Angeles. I purchased a 2017 Subaru Outback that is the subject of this lawsuit in California and accepted delivery of the vehicle in the County of Ventura.

5. Based on the facts set forth herein, this Court is a proper venue for the prosecution of Plaintiff's Cause of Action alleging violation of California's Consumers Legal Remedies Act because my 2017 Subaru Outback that is the subject of this lawsuit is situated here, and a substantial portion of the events giving rise to my claims occurred here.

Executed on December 5, 2019, in Santa Clarita, California.

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